United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 22-1221**
	)	**Issued: December 8, 2022**
U.S. POSTAL SERVICE, POST OFFICE, JACKSONVILLE, FL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 15, 2022 appellant filed a timely appeal from a July 25, 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 left foot condition causally related to the accepted January 29, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the July 25, 2022 decision, appellant submitted additional evidence to OWCP. 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 February 3, 2022 appellant, then a 26-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her left foot when she tripped over a stump in the dark while in the performance of duty on January 29, 2022. She explained that she had a prior injury to her left foot.[3] On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. She stopped work on January 30, 2022.

OWCP received a Duty Status Report (Form CA-17) dated February 2, 2022 from Dr. Gregory McNamara, a Board-certified internist and anesthesiologist who noted appellant's date of injury as January 29, 2022 and indicated that appellant stepped down from her vehicle and injured her left toe. He related findings of pain/bruise of the left toe. Appellant was advised to not return to work. OWCP also received an attending physician's report (Form CA-20) dated February 7, 2022 and signed by Dr. McNamara. He reiterated appellant's alleged history of injury occurring when appellant stepped out of her employing establishment vehicle. Dr. McNamara indicated that appellant had a left great toe injury, and indicated that the condition was caused or aggravated by appellant's employment activity.

The employing establishment issued an undated Authorization for Examination and/or Treatment report (Form CA-16). The form indicated that medical treatment was authorized for a possible refracture of appellant's left great toe.

By development letter dated February 22, 2022, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. A questionnaire was provided to appellant to substantiate the factual elements of her claim. Further, OWCP requested a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation from a physician as to how the work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 24, 2022, OWCP accepted that the January 29, 2022 employment incident occurred as alleged and that a medical condition was diagnosed in connection with the incident. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed condition and the accepted January 29, 2022 employment incident.

On April 18, 2022 appellant requested a review of the written record.

On March 16, 2022 appellant was treated by Dr. Jasmaine Shelford, a podiatrist, who indicated that appellant complained of pain in the left foot and left toe. Appellant related that she was previously diagnosed with a left toe fracture in August 2021, and that another physician suspected an improper healing of the fractured toe because she had intermittent swelling of her left

[3] On July 26, 2021 appellant filed a traumatic injury claim (Form CA-1) alleging that on March 28, 2021 she fractured her left toe while stepping out of her employing establishment vehicle. OWCP assigned this claim File No. xxxxxx341. It accepted the claim for nondisplaced fracture of the left great toe. OWCP File No. xxxxxx341 has been combined with File No. xxxxxx169, with the former serving as the master file.

foot. Dr. Shelford assessed unspecified fracture of left foot, pain in left foot, and unspecified injury of left foot.

On April 13, 2022 appellant again treated with Dr. Shelford who assessed unspecified osteoarthritis. An injection to appellant's left 3rd metatarsophalangeal joint (MTPJ) was administered. On May 25, 2022 Dr. Shelford administered an additional injection to left 3rd MTPJ.

OWCP also received physical therapy progress notes dated May 19, 23, 26, and June 1 and 2, 2022. Appellant related pain in the lateral side of the left ankle and into the left great and lesser toes, as well as numbness in the bottom of the foot. The date of injury was noted as March 1, 2021. Appellant's diagnoses were listed as unspecified superficial injury of unspecified lesser toe, displaced unspecified fracture of left great toe, and other specific joint derangements of left ankle.

By decision dated July 25, 2022, OWCP's hearing representative affirmed the March 24, 2022 decision. The hearing representative found that the medical evidence provided was insufficient to establish that appellant's diagnosed medical condition was causally related to her accepted January 29, 2022 employment 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 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 of FECA, 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 an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury. An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[7]

[4] *Id.*

[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] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *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] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[8] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the employment injury must be based on a complete factual and medical background.[9] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's employment injury.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted January 29, 2022 employment incident.

Appellant submitted medical reports from Dr. Shelford dated March 16, April 13, and May 25, 2022. These reports related appellant's diagnoses as fracture of left foot, pain in left foot, unspecified injury of left foot, and unspecified osteoarthritis. However, Dr. Shelford did not provide an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value regarding the issue of causal relationship.[12] Appellant had related to Dr. Shelford her history of a prior fracture of her left toe in August 2021. If work-related exposures caused, aggravated, or accelerated appellant's condition, she could be entitled to compensation.[13] However, a well-rationalized opinion is particularly warranted when there is a history of a preexisting condition.[14] As such, Dr. Shelford's reports are insufficient to establish causal relationship.

Appellant also submitted a duty status report (Form CA-17) and an attending physician's report (Form CA-20) from Dr. McNamara dated February 2, 2022. These reports noted appellant's prior history related to her March 28, 2021 injury, that appellant stepped down from her vehicle and injured her left toe. These reports did not relate appellant's correct history of injury

[8] *R.P.*, Docket No. 21-1189 (issued July 29, 2022); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *R.P., id.*; *F.A.*, Docket No. 20-1652 (issued May 21, 2021); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *Id.*

[11] *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *see also J.L.*, Docket No. 18-1804 (issued April 12, 2019).

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

[13] *P.G.*, Docket No. 19-1827 (issued May 15, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019).

[14] *J.H.*, Docket No. 20-1645 (issued August 11, 2021); *T.M.*, Docket No. 08-0975 (issued February 6, 2009).

on January 29, 2022, when she tripped over a stump. The Board has previously explained that medical reports which contain an incorrect history of injury are of limited probative value.[15]

Physical therapy progress notes were also received. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[16] These reports are, therefore, of no probative value and are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed left foot condition and the accepted January 29, 2022 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 a left foot condition causally related to the accepted January 29, 2022 employment incident.[17]

[15] *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *see J.M.*, Docket No. 17-1002 (issued August 22, 2017) (a medical opinion must reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions).

[16] *H.S.*, Docket No. 20-0939 (issued February 12, 2021); 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); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists are not considered physicians under FECA).

[17] The Board notes that the employing establishment issued an undated Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form 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. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 25, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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