United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 23-0227**
	)	**Issued: August 14, 2023**
DEPARTMENT OF VETERANS AFFAIRS, JOHN L. MCCLELLAN MEMORIAL VETERANS' HOSPITAL, Little Rock, AR, 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:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 5, 2022 appellant filed a timely appeal from a November 18, 2022 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.

[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*.

ISSUE

The issue is whether appellant has established a medical condition causally related to the accepted November 20, 2018 employment incident.

FACTUAL HISTORY

On October 13, 2020 appellant, then a 40-year-old food service worker, filed an occupational disease claim (Form CA-2) alleging that she broke her foot due to factors of her federal employment when she was pushing a cart out the door and stepped in front of it to keep it from hitting someone and it ran over her left foot. She noted that she first became aware of her condition and its relation to her federal employment on November 21, 2018. She stopped work on September 10, 2020.

In an October 19, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received a November 20, 2018 emergency department note from Sarah Anderson, a physician assistant, relating that appellant's left foot got caught under the wheel of a large cart she was pulling, and the cart rolled over it. Ms. Anderson's examination of the left foot and ankle revealed tenderness to palpation of the lateral ankle and mid foot with mild swelling, as well as pain elicited with flexion and extension. She noted that an x-ray of the foot and ankle revealed no acute abnormality. Ms. Anderson diagnosed foot sprain and ankle sprain and advised appellant to walk with a boot for five to seven days.

In a November 29, 2018 report, Dr. Edith Fraley, Board-certified in emergency medicine, related that appellant was injured when a food cart she was pulling rolled over her foot. Dr. Fraley noted that appellant had returned to work several days prior, but was never cleared, and continued to have left foot pain and a limp. She diagnosed left foot sprain and advised that appellant could perform light-duty work. In a December 4, 2018 note, Dr. Fraley related appellant's history of injury and recommended that appellant wear the boot for another week and continue with her work restrictions. In a December 11, 2018 note, she related that appellant was still tender in the left instep but had improved. Dr. Fraley recommended prosthetic insoles to help with the pain. She diagnosed left foot strain/sprain and released appellant to work without restrictions.

A December 4, 2019 report signed by Dr. Alex Buk, a podiatrist, indicated that appellant had pain on the outside of the feet just under the ankle and on the bottom of the feet, but denied an injury or accident. Dr. Buk's examination demonstrated pain on palpation over the lateral sinus tarsi bilaterally, mild edema, and bunion and hammertoe deformity bilaterally. She reviewed x-rays of appellant's feet, which revealed increased hallux valgus and intermetatarsal angle consistent with bunion deformity. Dr. Buk diagnosed bilateral foot pain and bilateral ankle and foot synovitis and tenosynovitis and administered intra-articular injections to both subtalar joints. In reports dated December 23, 2019, and April 2 and July 1, 2020, she diagnosed left ankle and foot synovitis and tenosynovitis and administered intra-articular injections to the left subtalar joint. The December 23, 2019 report also noted that appellant was fitted for custom orthotics.

In a July 13, 2020 report, Dr. Jesse B. Burks, a podiatrist, related that appellant's symptoms began gradually over time, starting after an injury at work on November 21, 2019. Dr. Burks' examination of the left lower extremity demonstrated moderate edema of the ankle and hindfoot, significant pain on palpation over the left calcaneocuboid joint, limited and painful range of motion of the midtarsal joint, and diffuse pain and edema of the left ankle. He interpreted a left foot x-ray, which revealed that a previous fracture of the distal aspect of the calcaneus had disrupted the articular surface of the calcaneocuboid joint. Dr. Burks diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as calcaneocuboid joint arthrosis secondary to calcaneal fracture. In a work excuse note of even date, he advised that appellant could return to work on July 14, 2020. In August 3 and September 10, 2020 reports, Dr. Burks clarified that appellant's original injury was in 2018. He interpreted a July 31, 2020 magnetic resonance imaging (MRI) scan of the left ankle, which revealed bone marrow edema in both the cuboid and calcaneus consistent with a previous injury, as well as a small fragment from the anterior process of the calcaneus and mild joint space narrowing. Dr. Burks diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as left sinus tarsi syndrome secondary to injury.

On September 10, 2020 Dr. Burks performed a synovectomy of left sinus tarsi and removal of fracture fragment from anterior process of the left calcaneus. He diagnosed synovitis with fracture fragment left sinus tarsi.

In September 17 and 24, 2020 reports, Dr. Burks related that appellant was doing well after surgery. He reviewed x-rays of the left foot, which revealed no bony complications. Dr. Burks diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as follow-up on left foot surgery. In a work excuse note dated September 17, 2020, he held appellant off work for four to six weeks.

A November 2, 2020 statement from T.L, an employing establishment workers' compensation supervisor, reviewed the medical evidence submitted by appellant and opined that she had not established performance of duty or causal relationship.

By decision dated December 3, 2020, OWCP denied appellant's occupational disease claim, finding that she had not established the alleged factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 9, 2021 appellant requested reconsideration. In a statement dated January 20, 2021, appellant clarified that her foot was injured within a single workday on November 20, 2018. She was misdiagnosed in the emergency room and continued to work with her injured foot until July 2020, when Dr. Bowen determined that her foot was broken.

By decision dated May 10, 2021, OWCP modified the December 3, 2020 decision to find that the evidence of record established that the November 20, 2018 employment incident occurred as alleged and established a medical diagnosis; however, the claim remained denied as the medical

evidence of record was insufficient to establish how appellant's diagnosed condition was causally related to the accepted November 20, 2018 employment incident.[3]

On August 9, 2021 appellant, through counsel, requested reconsideration.

Appellant subsequently submitted a November 20, 2018 email from her supervisor, B.W., and a November 21, 2018 employing establishment incident report, both of which corroborated appellant's account of the November 20, 2018 employment incident.

A November 29, 2018 duty status report (Form CA-17) signed by Pamela Y. Sherman, a nurse practitioner, diagnosed left ankle sprain and advised that appellant could return to work with restrictions.

Appellant continued to submit evidence, including duplicate copies of medical evidence already of record and memoranda from the employing establishment dated November 29 and December 4, 2018 outlining her work restrictions.

By decision dated March 8, 2022, OWCP denied modification of the May 10, 2021 decision.

On April 5, 2022 appellant requested reconsideration. OWCP continued to receive duplicate medical reports. By decision dated November 18, 2022, it denied modification of the March 8, 2022 decision.

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 timely filed within the applicable time limitation period of FECA,[5] 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.[6] 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.[7]

[3] The Board notes that in OWCP's decision, it converted appellant's claim to a traumatic injury claim and clarified that the date of injury was November 20, 2018.

[4] *Supra* note 2.

[5] *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).

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

[7] *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).

To determine whether 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 at the time and place, and in the manner alleged.[8] The second component is whether the employment incident caused a personal injury.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 20, 2018 employment incident.

In November 29 and December 4, 2018 reports, Dr. Fraley related that appellant was injured when a food cart she was pulling rolled over her foot. On November 29, 2018 she diagnosed left foot sprain and advised that appellant could perform light-duty work. In a July 13, 2020 report, Dr. Burks related that appellant's symptoms began gradually over time, starting after an injury at work on November 21, 2019. Dr. Burks diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as calcaneocuboid joint arthrosis secondary to calcaneal fracture. In August 3 and September 10, 2020 reports, he clarified that appellant's original injury was in 2018. Dr. Burks diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as left sinus tarsi syndrome secondary to injury. Although both providers suggested a work-related cause for appellant's medical conditions, none provided a rationalized medical opinion relating a specific diagnosed condition to the November 20, 2018 employment incident. 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.[12] Therefore, these reports are insufficient to establish appellant's traumatic injury claim.

In her December 4, 2019 report, Dr. Buk indicated that appellant denied an injury or accident. She diagnosed bilateral foot pain and bilateral ankle and foot synovitis and tenosynovitis.

[8] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *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).

[11] *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).

[12] *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

This history contradicts appellant's account of a cart rolling over her foot while in the performance of duty. Dr. Buk did not provide an opinion on causal relationship between appellant's diagnosed conditions and the accepted November 20, 2018 employment incident. The Board has held that evidence that fails to provide an opinion on causal relationship is of no probative value.[13] Thus, this evidence is insufficient to establish the claim.

In a December 11, 2018 note, Dr. Fraley related that appellant was still tender in the left instep and diagnosed left foot strain/sprain. In reports dated December 23, 2019, April 2, and July 1, 2020, Dr. Buk diagnosed left ankle and foot synovitis and tenosynovitis. In a work excuse note dated July 13, 2020, Dr. Burks advised that appellant could return to work on July 14, 2020. In September 17 and 24, 2020 reports, he related that appellant was doing well after surgery and diagnosed post-traumatic osteoarthritis, transient synovitis, and pain in the left ankle and foot, as well as follow up on left foot surgery. Finally, in a work excuse note dated September 17, 2020, Dr. Burks held appellant off work for four to six weeks. However, these providers did not offer opinions on 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 on the issue of causal relationship.[14] For this reason, this medical evidence is insufficient to meet appellant's burden of proof.

In support of her claim, appellant also submitted a November 20, 2018 emergency department note from a physician assistant and a November 29, 2018 Form CA-17 from a nurse practitioner. However, certain healthcare providers such as nurse practitioners[15] are not considered "physician[s]" as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[17]

As the medical evidence of record is insufficient to establish a medical condition causally related to the accepted November 20, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

[13] *See C.R.*, Docket No. 23-0330 (issued July 28, 2023); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *Id.; see also S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019).

[15] *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[16] Section 8102(2) of FECA provides as follows: (2) 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. § 8102(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); *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); *see also B.D.*, Docket No. 22-0503 (issued September 27, 2022) (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (nurse practitioners and physician assistants are not considered physicians as defined under FECA).

[17] *Id*.

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 medical condition causally related to the accepted November 20, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 18, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 14, 2023
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