

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

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**A.H., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**New Orleans, LA, Employer** )  
\_\_\_\_\_ )

**Docket No. 23-0322**  
**Issued: August 9, 2023**

*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 December 30, 2022 appellant filed a timely appeal from a December 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has established a left foot condition causally related to the accepted September 16, 2022 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the December 12, 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 September 27, 2022 appellant, then a 45-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 16, 2022 she fractured her left foot when delivering a package and stepping on a curb while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured while in the performance of duty. Appellant stopped work on September 18, 2022.

In support of her claim, appellant submitted a September 16, 2022 statement indicating that she twisted her ankle that day while walking on a step wrong, but that she did not wish to seek medical attention.

Appellant also submitted a September 18, 2022 after-visit summary, an unsigned administrative document which contained instructions and indicated diagnoses of left ankle swelling and closed displaced fracture of navicular bone of left foot.

In a September 20, 2022 work excuse note, Dr. Frederick L. Keppel, a Board-certified orthopedic surgeon, held appellant off work pending further evaluation.

The employing establishment executed a September 27, 2022 authorization for examination and/or treatment (Form CA-16). The accompanying attending physician's report, Part B of the Form CA-16, was unsigned and undated. A duty status report (Form CA-17) of even date, which diagnosed left foot navicular fracture and released appellant for sedentary work, was also unsigned.

On October 11, 2022 Dr. Keppel held appellant off work until October 24, 2022. On October 11, 2022 OWCP received an unsigned and undated page of a medical report including diagnoses of closed nondisplaced fractures of navicular and cuboid bones of left foot with routine healing.

In a development letter dated October 17, 2022, OWCP informed appellant of the deficiencies of her claim and advised her of the type of evidence needed. It afforded her 30 days to submit the necessary evidence.

Appellant underwent a left ankle x-ray on September 18, 2022, which revealed an acute, displaced intra-articular fracture at the dorsal aspect of the tarsal navicular bone with extension into the talonavicular joint. A September 20, 2022 left foot x-ray revealed dorsal spurring of the navicular bone in the midfoot.

In a September 26, 2022 work excuse note, Dr. Keppel held appellant off work pending further evaluation and treatment.

Appellant resubmitted the September 27, 2022 Form CA-17, now bearing an illegible signature.

In an October 5, 2022 work excuse note, Dr. Keppel continued to hold appellant off work.

An October 10, 2022 left foot computerized tomography (CT) scan revealed acute fractures of the navicular bone and cuboid bone.

In an October 11, 2022 report, Dr. Keppel related that appellant was seen for follow up regarding the navicular bone fracture in her left foot, which had not improved with the use of a walking boot. He reviewed a left foot CT scan and diagnosed closed nondisplaced fractures of navicular and cuboid bones of left foot with routine healing. Dr. Keppel recommended that appellant stay off work until October 24, 2022.

By decision dated November 17, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted September 16, 2022 employment incident.

OWCP continued to receive evidence. In a September 18, 2022 report, Jason T. Williams, a nurse practitioner, related that appellant injured her left ankle after a misstep at work two days prior. His examination of the left ankle revealed swelling, ecchymosis, and mild tenderness to palpation just below lateral malleolus and proximal fifth metatarsal and dorsum of proximal foot. Mr. Williams reviewed an x-ray and diagnosed left ankle swelling and closed displaced fracture of navicular bone of left foot. He advised that appellant should be non-weightbearing.

In a September 27, 2022 report, Mary Warren-Taylor, a nurse practitioner, diagnosed closed displaced fracture of navicular bone of left foot and encounter related to workers' compensation. She advised that appellant could perform sedentary work.

In October 24, November 8, and December 6, 2022 CA-17 forms, Dr. Keppel diagnosed a left foot fracture. In the October 24, 2022 form, he related that appellant sustained a left foot fracture from a twisting injury and released her for sedentary work.

On December 8, 2022 appellant requested reconsideration. In support of her request, she submitted an undated statement describing her history of injury and treatment, as well as an undated statement from a customer who witnessed the September 16, 2022 employment incident, and an unsigned and undated page of a medical report including a diagnosis of closed nondisplaced fracture of navicular bone of left foot.

By decision dated December 12, 2022, OWCP denied modification of the November 17, 2022 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> that an injury was sustained in the performance of duty as alleged,

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *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).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</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>6</sup>

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.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>9</sup> 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.

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left foot condition causally related to the accepted September 16, 2022 employment incident.

In an October 24, 2022 Form CA-17, Dr. Keppel related that appellant sustained a left foot fracture from a twisting injury and released her for sedentary work. Although he suggested a work-related cause for her medical condition, he did not provide a rationalized medical opinion relating a specific diagnosed condition to the September 16, 2022 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.<sup>10</sup> Therefore, this report of Dr. Keppel is insufficient to establish appellant's traumatic injury claim.

Appellant submitted work excuse notes from Dr. Keppel dated September 20 through October 11, 2022. In an October 11, 2022 report, Dr. Keppel diagnosed closed nondisplaced fractures of navicular and cuboid bones of left foot with routine healing. In November 8 and

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

<sup>6</sup> *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).

<sup>7</sup> *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *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).

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

December 6, 2022 CA-17 forms, he diagnosed a left foot fracture. However, Dr. Keppel did not offer an opinion on causal relationship in any of these reports. 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.<sup>11</sup> For these reasons, these reports of Dr. Keppel are insufficient to meet appellant's burden of proof.

Additional documents, including an undated attending physician's report which constituted Part B of a Form CA-16, a September 18, 2022 after-visit summary, a September 28, 2022 Form CA-17, and undated pages of two medical reports were unsigned or bore illegible signatures. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.<sup>12</sup> Therefore, this evidence is also of no probative value and is insufficient to establish appellant's claim.

Appellant also submitted a September 18, 2022 report and after-visit summary signed by Mr. Williams and a September 27, 2022 report signed by Ms. Warren-Taylor, both nurse practitioners. The Board has held that medical reports signed solely by a nurse practitioner are of no probative value as such healthcare providers are not considered physicians as defined under FECA and are, therefore, not competent to provide medical opinions.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

The remaining medical evidence consisted of a September 18, 2022 left ankle x-ray, a September 20, 2022 left foot x-ray, and an October 10, 2022 left foot CT scan. The Board has held, however, that diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between an accepted employment factor/incident and a diagnosed condition.<sup>14</sup> For this reason, this evidence is also insufficient to meet appellant's burden of proof.

As the medical evidence of record is insufficient to establish a left foot condition causally related to the accepted September 16, 2022 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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<sup>11</sup> *S.J.*, Docket No. 19-0696 (issued August 23, 2019); *M.C.*, Docket No. 18-0951 (issued January 7, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>12</sup> *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>13</sup> 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) (a nurse practitioner is not considered a physician as defined under FECA).

<sup>14</sup> *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

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 September 16, 2022 employment incident.<sup>15</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 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

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<sup>15</sup>The Board notes that the employing establishment issued a 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).