United States Department of Labor
Employees' Compensation Appeals Board

V.C., Appellant	)	
and	)	**Docket No. 23-0478**
	)	**Issued: August 7, 2023**
U.S. POSTAL SERVICE, POSTAL SERVICE HEADQUARTERS, Washington, DC, Employer	)	

Appearances:
Aaron B. Aumiller, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 21, 2023 appellant, through counsel, filed a timely appeal from a September 14, 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.[3]

[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*.

[3] The Board notes that, following the issuance of the September 14, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that her diagnosed medical conditions are causally related to the accepted July 30, 2020 employment incident.

FACTUAL HISTORY

On August 3, 2020 appellant, then a 56-year-old custodial worker, filed a traumatic injury claim (Form CA-1) alleging that on July 30, 2020 she sustained a contusion and bruise on her right second toe when a vacuum cleaner fell from a mounting bracket while in the performance of duty. She stopped work on July 30, 2020.

In support of her claim, appellant submitted medical evidence from Delys V. Gribbin, a physician assistant. In an attending physician's report (Form CA-20) dated July 30, 2020, Ms. Gribbin diagnosed right foot contusion and advised that the diagnosed condition was caused or aggravated by an employment activity. She further advised that appellant was totally disabled from July 30 through August 2, 2020, and could return to work on August 3, 2020.

In patient discharge instructions dated July 30, 2020, Ms. Gribbin reiterated her diagnosis of right foot contusion.

OWCP, by development letter dated August 13, 2020, informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond.

OWCP subsequently received medical evidence from Dr. Mark Major, a physician specializing in family medicine. In an August 8, 2020 report, Dr. Major noted his findings on physical examination. He provided assessments which included left rotator cuff tear.

In an August 18, 2020 return-to-work note, Dr. Major noted that appellant was seen in his office on July 31, 2020. He advised that she may not return to work until she was cleared by a specialist.

In an August 25, 2020 prescription, Dr. Major ordered physical/occupational therapy to treat appellant's diagnoses of left shoulder rotator cuff tendinopathy impingement, neck, and left ankle pain. In referral orders dated August 28, 2020, he ordered physical therapy to treat her diagnoses of left rotator cuff syndrome and referred her for an orthopedic evaluation of her complete tear of the left wrist ligament.

In an August 28, 2020 report, Dr. Major discussed appellant's physical examination findings. He provided assessments of pain in the low back and left shoulder joint.

Dr. Major, in prescriptions dated September 14, 2020, indicated that appellant was status postsurgery and ordered a wrist brace.

In an August 11, 2020 right foot magnetic resonance imaging (MRI) scan report, Dr. Samir Chedda, a Board-certified diagnostic radiologist, provided an impression of nondisplaced fracture first distal phalanx. He also provided an impression of tiny focus of bone marrow edema along the plantar aspect of the second middle phalanx base, which could reflect bone contusion versus nondisplaced fracture; and mild soft tissue edema that surrounded the second interphalangeal joint.

By decision dated September 30, 2020, OWCP accepted that the July 30, 2020 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

On October 26, 2020 appellant requested reconsideration. In support of the request, she submitted a September 23, 2020 surgical screening by Dr. Wilson[4] who requested that Dr. Major perform presurgical testing prior to appellant's left wrist scapholunate repair.

Appellant also submitted an October 13, 2020 disability certificate from Dr. Darlene Jean-Pierre, a Board-certified orthopedic surgeon, who recommended that appellant remain off work for six weeks pending surgery due to limited use of her left upper extremity, and inability to stand or walk on her right foot for long periods.

By decision dated December 17, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On July 2, 2021 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted additional medical evidence. In a January 14, 2021 report, Dr. Jean-Pierre noted that appellant presented for follow up of her left wrist pain. She reported her findings on physical examination and provided impressions of scapholunate dissociation of the left wrist and abscess of left shoulder bursa.

In a February 1, 2021 report, Dr. Michael Mills, an orthopedic surgeon, discussed his findings on physical examination and reviewed diagnostic test results. He provided impressions of neck sprain, subsequent encounter, lumbar sprain, sequela, and mechanical back pain. Dr. Mills placed appellant on limited duty with restrictions.

In a June 18, 2021 letter, Dr. Curtis Henn, a Board-certified orthopedic surgeon, noted that appellant related a history of the accepted July 2020 employment incident. He also noted that he performed a repair of the left wrist ligament tear on April 6, 2021 which confirmed a diagnosis of complete scapholunate ligament tear. Dr. Henn opined that appellant's diagnosed condition was directly caused by the accepted employment incident based on her history of injury, x-ray results, and his surgical findings. He noted that it was common for the diagnosed wrist tear to occur with the mechanism of injury as described by appellant.

OWCP, by decision dated September 29, 2021, modified the December 17, 2020 decision to reflect that appellant had failed to establish fact of injury. It found that she had not provided a completed development questionnaire.[5]

On June 16, 2022 appellant, through counsel, requested reconsideration. Counsel submitted a March 10, 2022 letter in which appellant described the alleged July 30, 2020 employment incident. Appellant claimed that she sustained left wrist and right foot injuries as a result of the alleged employment incident. She explained that she injured her left wrist when a vacuum cleaner cord became stuck on the mounting bracket, snatched her and the vacuum cleaner

[4] The Board notes that Dr. Wilson's full name and professional qualifications could not be verified.

[5] The Board notes that the case record does not indicate that a questionnaire accompanied OWCP's August 13, 2020 development letter.

away from her, twisted her around and caused her wrist to turn with the vacuum cleaner. Appellant related that she injured the toes on her right foot when the vacuum cleaner fell on it. She noted that she informed D.D., her supervisor, that she sustained a left wrist injury while completing forms with him and he told her to have her wrist evaluated and treated in the hospital emergency room.

In a September 14, 2022 decision, OWCP modified the September 29, 2021 decision to reflect that appellant had established fact of injury, but denied the claim as she had not established causal relationship between the diagnosed conditions and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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,[7] 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.[8] 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.[9]

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. The first component is whether the employee actually experienced the employment incident at the time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[10]

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

[6] *Supra* note 2.

[7] *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[8] *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[9] *V.L., supra* note 7; *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[10] *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).

[11] *C.H., supra* note 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).

nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[12]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a right foot contusion causally related to the accepted July 30, 2020 employment incident.

OWCP's procedures provide that 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.[13] Its procedures further states that, in cases of serious injury 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.[14] Appellant alleged that on July 30, 2020 she sustained a contusion and bruise on her right second toe when she removed a vacuum cleaner from a mounting bracket and it fell on her foot. In support of her claim, she submitted a Form CA-20 dated July 30, 2020, wherein a physician assistant diagnosed right foot contusion, and advised that the diagnosed condition was caused or aggravated an employment activity. This diagnosis was consistent with appellant's physical examination and the mechanism of injury. As appellant has established that she sustained a visible injury, the Board finds that she has met her burden of proof to establish a right foot contusion causally related to the accepted employment incident.[15] The case will, therefore, be remanded for payment of medical expenses for her injury, to be followed by a *de novo* decision regarding any attendant disability.[16]

The Board further finds, however, that appellant has not established additional compensable diagnosed conditions as causally related to the accepted July 30 2020 employment injury.

In support of her claim, appellant submitted a June 18, 2021 letter from Dr. Henn who diagnosed complete scapholunate ligament tear of the left wrist. He opined that her diagnosed condition was directly caused by the July 30, 2020 employment incident, based upon the mechanism described by her, his review of x-ray results, and his April 6, 2021 left wrist surgical findings. While Dr. Henn noted that it was common to tear this wrist ligament with the mechanism described by appellant, he did not offer a rationalized medical opinion explaining how the

[12] *V.L., supra* note 7; *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).

[13] *Supra* note 3.

[14] *Id*.

[15] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); *id*. at Chapter 2.805.3(c) (January 2013). *See also J.C.*, Docket No. 22-1029 (issued November 29, 2022); *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

[16] *See J.C., id.*; *B.W.*, Docket No. 22-0134 (issued May 24, 2022); *K.V.*, Docket No. 21-1409 (issued April 19, 2022).

mechanism by which the accepted July 30, 2020 employment incident would have resulted in her 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 a given medical condition/disability was related to employment factors.[17] Dr. Henn's letter is, therefore, insufficient to establish expansion of the claim.

The reports of Drs. Major, Jean-Pierre, Mills, and Wilson addressed appellant's left shoulder, left wrist, left ankle, neck, and lumbar conditions, work capacity, and medical treatment, but did not address causal relationship. Medical reports lacking an opinion regarding causal relationship are of no probative value.[18] Thus, the Board finds that these reports are insufficient to establish expansion of the claim.

The remaining medical evidence of record consists of Dr. Chedda's August 11, 2020 MRI scan and July 30, 2020 reports by Ms. Gribbin, a certified physician assistant. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[19] The Board has also held that certain healthcare providers such as physician assistants are not considered physicians as defined under FECA and, thus, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. Consequently, these reports are insufficient to establish expansion of the claim.[20]

As the medical evidence of record is insufficient to establish an additional diagnosed medical condition as causally related to the accepted July 30, 2020 employment injury, the Board finds that appellant has not met her burden of proof.

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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[17] *See J.C.*, Docket No. 22-0215 (issued February 14, 2023); *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[18] *See E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[19] *E.K.*, *id.*; *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[20] Section 8101(2) 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 supra* note 15 at Chapter 2.805.3a(1) (September 2020); *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 M.M.*, Docket No. 20-1649 (issued January 4, 2023) (physician assistants are not considered physicians as defined by FECA).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a right foot contusion causally related to the accepted July 30, 2020 employment incident. The Board further finds that she has not established an additional medical condition or disability causally related to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 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: August 7, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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