United States Department of Labor
Employees' Compensation Appeals Board

B.R., Appellant	)	
and	)	**Docket No. 23-0546**
	)	**Issued: August 29, 2023**
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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 8, 2023 appellant filed a timely appeal from a February 7, 2023 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 16, 2022 employment incident.

FACTUAL HISTORY

On August 18, 2022 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2022 she injured her left foot and ankle while in the performance of duty. She indicated that her foot "went sideways" as she stepped off a bottom

[1] 5 U.S.C. § 8101 *et seq*.

step onto the ground. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on August 16, 2022.

An x-ray report of the left ankle dated August 16, 2022 signed by Dr. David McKay, a Board-certified diagnostic radiologist, indicated lateral soft tissue swelling, but no fracture or dislocation. A left foot x-ray report of even date signed by Dr. John Boon, a Board-certified diagnostic radiologist, had no acute findings.

On August 16, 2022 appellant was treated by Dr. Lee G. Barker, an osteopathic emergency medicine specialist. A work status note indicated that she was allowed to return to work without restrictions.

An x-ray report of the left foot dated August 29, 2022 and signed by Dr. David Bajayo, a Board-certified diagnostic radiologist, indicated soft tissue swelling dorsal aspect of the foot.

A computerized (CT) scan report of the left foot dated September 6, 2022 by Dr. Romil Y. Patel, a diagnostic radiology specialist, indicated no fracture and nonspecific soft tissue edema.

Appellant submitted a work status note dated September 19, 2022 with an illegible signature indicating that she was not yet at maximum medical improvement (MMI), but could return to work. Subsequent work status notes dated September 26 and October 4, 2022 with illegible signatures reiterated that she was not yet at MMI.

In a letter dated October 4, 2022, the employing establishment indicated that appellant was provided a job offer for modified duty in accordance with her work restrictions.

On October 5, 2022 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on August 16, 2022 and returned on October 5, 2022 on modified duty. The modified job offer was accepted on October 5, 2022.

A work status note dated October 24, 2022 with an illegible signature indicated that appellant could return to work at full duty, but was not at MMI.

On October 25, 2022 OWCP received a Form CA-3 indicating that appellant stopped work on August 16, 2022 and returned on October 24, 2022 at full duty.

OWCP received physical therapy progress notes dated from October 10 through November 9, 2022. The notes indicated appellant's diagnosis of sprain of unspecified ligament of the left ankle.

In a development letter dated December 28, 2022, OWCP advised appellant of the deficiencies in her claim. It informed her that additional factual and medical evidence was necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received a magnetic resonance imaging (MRI) scan report of the left foot dated September 15, 2022 by Dr. David Factor, a Board-certified diagnostic radiologist. Dr. Factor

indicated no fracture, but diffuse interstitial edema and possible foreign body near the ball of the foot.

An x-ray report of the left tibia/fibula dated September 26, 2022 by Dr. Joseph S. Gurinsky, a Board-certified diagnostic radiologist, indicated mild degenerative narrowing of the left knee medial compartment, but no evidence for bony lesion involving the distal left leg.

By decision dated February 7, 2023, OWCP found that the August 16, 2022 incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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.[3] 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.[4]

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 at the time, 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.[5]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[6] 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

[2] *Id*.

[3] *J.M*., Docket No. 17-0284 (issued February 7, 2018); *R.C*., 59 ECAB 427 (2008); *James E. Chadden, Sr*., 40 ECAB 312 (1988).

[4] *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).

[5] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[6] *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).

and medical background.[7] 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.[8] 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 16, 2022 employment incident.

Appellant has not sufficiently established the medical component of her claim. She alleged that she sustained a left foot/ankle injury at work when her foot twisted as she stepped off a stair. On August 16, 2022 appellant was seen by Dr. Barker. However, the work status note did not contain a diagnosis or a rationalized medical opinion explaining the nature of the relationship between a diagnosed condition and the accepted employment incident. The Board has held that a medical report lacking a firm diagnosis and rationalized medical opinion regarding causal relationship is of no probative value.[10] This report is, therefore, insufficient to establish appellant's claim.

Appellant also submitted multiple work status notes dated September 19 and 26 and October 4 and 24, 2022 with illegible signatures. The Board has held that medical evidence containing an illegible signature, or which is unsigned, has no probative value, as it is not established that the author is a physician.[11] These reports are, therefore, insufficient to establish appellant's claim.

Further, appellant submitted multiple diagnostic x-rays, CT scans, and MRI scan reports. However, these diagnostic studies also did not provide a firm diagnosis.[12] The Board has also held that diagnostic studies, standing alone, and lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[13]

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[7] *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).

[8] *Id.*

[9] *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).

[10] *J.E.*, Docket No. 21-0810 (issued April 13, 2023); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[11] *G.D.*, Docket No. 22-0555 (issued November 18, 2022); *see T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, 19-0967 (issued October 21, 2019); *see R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

[12] *Supra* note 10.

[13] *A.O.*, Docket No. 21-0968 (issued March 18, 2022); *see M.S.*, Docket No. 19-0587 (issued July 22, 2019).

OWCP also received physical therapy progress notes dated October 10 through November 9, 2022. 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.[14] These notes are thus of no probative value and are insufficient to establish appellant's claim.

As the evidence of record does not include a medical report establishing a firm diagnosed medical condition in connection with the accepted August 16, 2022 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 16, 2022 employment incident.

[14] 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* 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 H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 29, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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