

ISSUE

The issue is whether appellant met her burden of proof to establish a traumatic injury in the performance of duty on June 28, 2021, as alleged.

FACTUAL HISTORY

On November 21, 2022 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 28, 2021 at 11:00 a.m., when on mail route 501, she sustained a right foot injury while in the performance of duty. She indicated that she rolled her ankle while delivering a package. Appellant also explained that she was told that she broke her fifth metatarsal of the right foot. She noted that her right foot had been in a boot for so long it had compromised her right hip and right lower back. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on June 28, 2021.

A work status note dated July 20, 2021 by Dr. Tracy A. Pesut, a Board-certified orthopedic surgeon, indicated that appellant was unable to weight-bear without her boot walker and crutches, and was, therefore, unable to walk on her route. Appellant's restrictions continued after being seen again on August 10, 2021 in the same clinic by Jaclyn E. Tubaro, a physician assistant.

In a development letter dated November 23, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP also provided a Form CA-20. It afforded appellant 30 days to respond. No response was received.

By decision dated December 29, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the incident occurred on June 28, 2021, as alleged. It concluded, therefore, that the requirements had not been met to establish fact of injury as defined by FECA.

On January 10, 2023 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on June 28, 2021 and returned to full duty on July 6, 2021.

On May 15, 2023 appellant, through counsel, requested reconsideration. Additional medical evidence was received.

On June 29, 2022 appellant was seen by Ms. Tubaro as a follow-up for her right foot fractures. She noted that appellant had healed a Jones fracture recently, but then presented approximately a month ago for increasing foot pain. An x-ray report of the right foot showed a healed fifth metatarsal fracture with some healing of the fourth metatarsal fracture.

In a subsequent July 12, 2022 progress report, Dr. Pesut noted that appellant had mild dorsal swelling and minimal tenderness over the fourth metatarsal. An x-ray revealed "some" callus formation around the fourth metatarsal. Dr. Pesut further continued work restrictions.

On July 7, 2022 appellant was seen by Dr. Samuel A. Yoakum, who noted a history of injury that appellant presented with a history of right leg and back pain since the beginning of 2021. Appellant's pain began after falling and fracturing her right fifth metatarsal. Dr. Yoakum related that she was in a boot for over a year and came out temporarily, but had another fracture of the fourth metatarsal. Appellant noted pain radiating from the low back down to the right leg, as well as intermittent numbness and tingling. Lumbar x-rays showed multilevel disc degeneration, Dr. Yoakum diagnosed lumbar disc degeneration with questionable right-sided L4-5 radiculitis and possible overlapping right hip impingement.

In a report dated July 25, 2022, Dr. Yoakum related that appellant was seen for a follow-up of a magnetic resonance imaging (MRI) scan review. He related that the MRI scan indicated very minor disc desiccation at L4-5 and L5-S1 levels. Dr. Yoakum also related that appellant requested to proceed with a right hip intra-articular injection for right hip pain.

On November 8, 2022 appellant was seen by Dr. Michael J. McCollum, a Board-certified orthopedic surgeon, for right hip pain and tingling. She related that she "broke her foot about a year ago" and started wearing a boot. Appellant further noted that she "irritated" her right hip while recovering and related lower back pain, groin pain, and lateral hip pain. Dr. McCollum administered a right hip injection. He further reviewed x-ray reports of the pelvis and right hip. Dr. McCollum diagnosed mild right hip arthritis, right hip trochanteric bursitis, and discogenic lower back pain.

On April 6, 2023 appellant was admitted to a hospital for a debridement of the left foot by Dr. Srinithya Mallela, a Board-certified internist. Dr. Mallela diagnosed appellant with left foot cellulitis, diabetic foot ulcer, chronic foot ulcer, obesity, and type 2 diabetes mellitus. Appellant was seen again at the same hospital on April 28, 2023 by Dr. John H. Eason, a Board-certified general surgeon, to have an abscess drained from the left foot.

An electromyography and nerve conduction velocity (EMG/NCV) study dated January 26, 2023 and signed by Dr. John Owens, a Board-certified physiatrist, showed evidence "suggestive" of a "distal, axonal, sensory greater than motor, peripheral neuropathy" involving the bilateral lower extremities.

A computerized tomography (CT) scan of the right foot dated and signed by Dr. James Stensby, a Board-certified diagnostic radiologist, on January 26, 2023 revealed: chronic nonunited fourth metatarsal shaft fracture; healed mildly displaced and angulated proximal fifth metatarsal shaft fracture; mild ankle osteoarthritis; and diffuse tarsometatarsal joint osteoarthritis, severe at the second and third tarsometatarsal joints.

On February 1, 2023 appellant was seen by Dr. Pesut, who reviewed a CT scan of the right foot. Dr. Pesut diagnosed right possible nonunion fourth metatarsal, right midfoot arthritis, healed right fifth metatarsal fracture, and diabetic neuropathy.

On January 6, 2023 appellant was seen again by Ms. Tubaro. She noted increasing pain while wearing her boot and symptoms through her right hip. An x-ray report of the right foot showed questionable healing of the fourth metatarsal fracture. Ms. Tubaro diagnosed right

possible nonunion fourth metatarsal, healed right fifth metatarsal fracture, and possible peripheral neuropathy *versus* radiculopathy.

On March 2, 2023 Dr. Pesut related that an x-ray report revealed fracture line that was “still evident” through the fourth metatarsal. Additional diagnoses of right midfoot arthritis and diabetic neuropathy were noted.

By decision dated August 7, 2023, OWCP denied modification of its December 29, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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 and place, and in the manner alleged. The second component is whether the employment incident caused an injury and can be established only by medical evidence.⁷

To establish that, an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee’s statements in determining whether a *prima facie* case has been established.⁸ An employee’s

⁴ *Supra* note 2.

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 *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).

⁸ *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on June 28, 2021 as alleged.

Appellant has not sufficiently explained how her injury occurred on June 28, 2021 and why she waited until November 21, 2022, to report the injury.¹⁰ In her November 21, 2022 claim form she alleged that she had rolled her foot and fractured her 5th right foot metatarsal. However, appellant did not otherwise describe the duties she was performing at the time she rolled her foot, or the mechanism of injury. She also did not respond to OWCP's request in the November 23, 2022 development letter that she provide further factual detail regarding the circumstances surrounding her injury.

Additionally, the medical evidence of record does not substantiate that appellant sought medical treatment until she was seen on July 20, 2021 by Dr. Pesut who noted her work restrictions, but offered no history of an injury on June 28, 2021. OWCP did not otherwise receive medical evidence contemporaneous to June 28, 2021. The Board notes that appellant was seen by a number of medical providers in 2022 and 2023 for complaints regarding her right foot, back, and/or hip, however, none of the medical reports of record related a history of injury on June 28, 2021. Appellant's failure to provide a complete history of injury to her treating medical providers casts serious doubt that a traumatic injury occurred in the performance of duty on June 28, 2021, as alleged.¹¹

In a report by Dr. Yoakum dated July 7, 2022, he included appellant's history of injury, indicating right leg and back pain since the beginning of 2021, which began after she fell and fractured her right fifth metatarsal. This history of injury suggests that appellant's metatarsal fracture occurred earlier in 2021, after she fell, not on June 28, 2021. These circumstances, which include a vague description of the alleged traumatic incident, late notification of injury, and a delay in seeking medical treatment, cast serious doubt on the validity of the claim.¹²

The record also contains medical evidence signed by a physician assistant. The Board has long held that certain healthcare providers such as physician assistants are not considered qualified "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement

⁹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ See *M.E.*, Docket No. 20-1336 (issued July 2, 2021); *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹¹ See also *S.Z.*, Docket No. 19-1125 (issued October 22, 2020); *Merton J. Sills*, 39 ECAB 572 (1988).

¹² *Supra* note 8.

to FECA benefits.¹³ Accordingly, this evidence is insufficient to meet appellant's burden of proof.

Additionally, the record contains diagnostic studies, including an EMG/NCV study and a CT scan. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion regarding whether the accepted employment incident caused a diagnosed condition.¹⁴ Therefore, this evidence is insufficient to meet appellant's burden of proof.

As the evidence of record is insufficient to establish a traumatic injury in the performance of duty on June 28, 2021 as alleged, 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 traumatic injury in the performance of duty on June 28, 2021, as alleged.

¹³ 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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

¹⁴ *A.W.*, Docket No. 22-1196 (issued November 23, 2022); *S.W.*, Docket No. 21-1105 (issued December 17, 2021); *W.L.*, Docket No. 20-1589 (issued August 26, 2021).

ORDER

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

Issued: April 16, 2024
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