United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 24-0474**
	)	**Issued: June 11, 2024**
DEPARTMENT OF VETERANS AFFAIRS, FAYETTEVILLE VA MEDICAL CENTER, Fayetteville, NC, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 2, 2024 appellant filed a timely appeal from a December 1, 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted July 11, 2023 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the December 1, 2023 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 July 13, 2023 appellant, then a 47-year-old medical records technician, filed a traumatic injury claim (Form CA-1) alleging that on July 11, 2023 she sustained injuries to her abdomen, left knee, left shoulder, and fractures of the right great toe while in the performance of duty. She explained that she slipped, lost her balance, and fell as she entered her hotel room shower while on travel duty to attend a work conference. Appellant did not stop work.

In support of her claim, appellant submitted a July 12, 2023 report, wherein Dr. Michael Daley, a Board-certified internist, recounted a history of a fall in a hotel shower on July 11, 2023, for which appellant sought treatment in a hospital emergency department. Dr. Daley noted that appellant had fractured her right great toe and had the toenail removed. On examination, he observed painful flexion and extension of the left shoulder with a negative drop arm test, diffuse abdominal bruising, and an absent right great toenail with some bleeding noted. Dr. Daley diagnosed left shoulder pain, left knee pain, status post fall, and fracture of great toe.

July 13, 2023 x-rays of the left shoulder revealed mild degenerative changes in the acromioclavicular joint. X-rays of the left knee of even date revealed minimal degenerative spurring from the margin of the medial tibial plateau.

An August 7, 2023 magnetic resonance imaging (MRI) scan of the left knee demonstrated medial meniscus posterior root sprain, a small joint effusion, and thickening of the proximal attachment of the lateral collateral ligament consistent with a prior low-grade sprain.

In an August 8, 2023 note, Nicole L. Lane, a physician assistant, excused appellant from work that day to attend a medical appointment.

In an August 11, 2023 letter, the employing establishment controverted the claim, as appellant had not submitted rationalized medical evidence supporting causal relationship.

In a development letter dated September 8, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a follow-up letter dated October 13, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the September 8, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received. By decision dated December 1, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that her diagnosed medical conditions were causally related to the accepted July 11, 2023 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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,[4] 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 11, 2023 employment incident.

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[3] *Supra* note 1.

[4] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

[5] *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

[6] *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

[7] *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

[9] *T.H.*, Docket No. 23-1142 (issued March 28, 2024); *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *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).

In his July 12, 2023 report, Dr. Daley recounted that appellant had fallen in a bathtub at a hotel and fractured her great toe. Appellant sought treatment at a hospital emergency department where the toenail was removed. Dr. Dailey diagnosed left shoulder pain, left knee pain, status-post fall, and fracture of great toe. However, he did not offer an opinion on causal relationship. The Board has held that medical reports lacking an opinion regarding causal relationship are of no probative value and insufficient to establish a claim.[10] Pain is considered a symptom and not a compensable medical diagnosis.[11] Thus, the Board finds that Dr. Dailey's report is insufficient to establish appellant's claim.

OWCP also received July 13 and August 7, 2023 diagnostic studies of the left shoulder and knee. 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.[12]

The remaining evidence consists of an August 8, 2023 note 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 to FECA benefits.[13] Accordingly, this document is insufficient to satisfy appellant's burden of proof.[14]

As the evidence of record is insufficient to establish causal relationship between the diagnosed medical conditions and the accepted July 11, 2023 employment incident, the Board finds that she has not met her burden of proof.[15]

[10] *T.H.*, *id*.; *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.*, Docket No. 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).

[11] *T.S.*, Docket No. 23-0772 (issued March 28, 2024); *see B.T.*, Docket No. 22-0022 (issued May 23, 2022); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

[12] *T.H.*, *id*.; *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).

[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] *N.B.*, Docket No. 19-0221 (issued July 15, 2019).

[15] *T.H.*, *supra* note 9; *R.N.*, Docket No. 21-0884 (issued March 31, 2023); *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 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 medical condition causally related to the accepted July 11, 2023 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 11, 2024
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