United States Department of Labor
Employees' Compensation Appeals Board

C.L., Appellant	)	
and	)	**Docket No. 24-0243**
	)	**Issued: May 22, 2024**
U.S. POSTAL SERVICE, MIAMI PROCESSING & DISTRIBUTION CENTER, Miami, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 10, 2024 appellant filed a timely appeal from a September 6, 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the September 6, 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle condition causally related to the accepted June 12, 2023 employment incident.

FACTUAL HISTORY

On June 12, 2023 appellant, then a 52-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a left ankle injury when she was walking and rolled her left ankle while in the performance of duty. She stopped work on June 12, 2023. On the reverse side of the form, H.M., appellant's supervisor, controverted the claim.

In a duty status report (Form CA-17) dated June 12, 2023, Dr. Nicole Nicophene, Board-certified in family medicine, diagnosed left ankle sprain, and opined that appellant could not perform regular-duty work.

In a June 12, 2023 report, Joseph Penna, an advanced practice registered nurse, evaluated appellant for left ankle pain after she had rolled her ankle earlier that day at work when she was walking with coworkers and her ankle twisted inward, causing her to fall to the floor in a seated position. Mr. Penna provided examination findings and diagnosed left ankle sprain. He applied a short leg splint and referred appellant for physical therapy. In a work activity status report of the same date, Mr. Penna reported that appellant could return to work with functional limitations and restrictions, which included seated work, crutches, and nonweight bearing of the joint for her left ankle sprain. In a state form report of the same date, he noted appellant's June 12, 2023 date of injury, diagnosed left ankle sprain, and checked a box indicating the condition was work related.

Appellant submitted June 12 and 16, 2023 x-rays of her left foot and ankle, which revealed an impression of no acute fracture or other findings.

In a June 16, 2023 report, Dr. Nicophene reported that appellant presented for evaluation of her left ankle, which she rolled at work when her ankle twisted inward causing her to fall to the floor in a seated position. She provided examination findings and reported that the June 16, 2023 x-rays of the left foot and ankle revealed no significant radiologic findings. Dr. Nicophene prescribed crutches and released appellant to work with restrictions of nonweight bearing seated work. In a Form CA-17 of the same date, she diagnosed left ankle sprain and recommended light-duty restrictions. In a state form report of the same date, Dr. Nicophene noted a June 12, 2023 date of injury and diagnosed left ankle sprain. She checked a box indicating the injury or illness was work related. Dr. Nicophene noted no preexisting conditions contributing to the reported work-related injury and provided light-duty restrictions for the foot and ankle.

In a June 21, 2023 medical report, Dr. Nicophene evaluated appellant for her left ankle injury. She noted a history of injury from June 12, 2023, when appellant rolled her left ankle while she was at work talking to her coworkers. Appellant described twisting her ankle inward, causing her to fall down into a seated position, resulting in worsening pain and difficulty ambulating. Dr. Nicophene reviewed the x-ray studies of the left foot and ankle, which revealed an impression of no acute findings. She diagnosed left ankle sprain, provided restrictions and referred appellant

to a specialist for follow up. In a Form CA-17 of the same date, Dr. Nicophene diagnosed left ankle sprain and recommended light-duty restrictions. In a state form report of the same date, she noted a June 12, 2023 date of injury and diagnosed left ankle sprain. Dr. Nicophene checked a box indicating that the injury or illness was work related.

In a June 29, 2023 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

Following OWCP's development letter, appellant submitted additional evidence in support of her claim.

In a June 12, 2023 report, Dr. Nicophene reported that appellant presented for evaluation of her left ankle, which she rolled at work while she was walking with coworkers when her ankle twisted inward causing her to fall to the floor in a seated position. She provided examination findings, diagnosed left ankle sprain, and recommended x-rays of the left foot and ankle.

In a June 28, 2023 Form CA-17, Dr. Nicophene diagnosed left ankle sprain and recommended light-duty restrictions.

In a June 28, 2023 report, Shelby Westbrook, a physician assistant, reported that appellant was reevaluated for complaints of left ankle pain. She provided examination findings and applied a gel cast with the joint in a neutral position. Ms. Westbrook diagnosed left ankle sprain and referred appellant for physical therapy. In a state form report of the same date, she noted appellant's June 12, 2023 date of injury and diagnosed left ankle sprain. Ms. Westbrook checked a box indicating the injury or illness was work related.

In a July 6, 2023 report, Dr. Nicophene discussed appellant's course of treatment and examination findings related to the left ankle. She diagnosed sprain of unspecified ligament of the left ankle and noted that appellant sought treatment through physical therapy. Dr. Nicophene held appellant off work as there was no light-duty work available to her. In a Form CA-17 of the same date, she diagnosed left ankle sprain and recommended light-duty restrictions. In a state form report of the same date, Dr. Nicophene noted a June 12, 2023 date of injury and diagnosed left ankle sprain. She checked a box indicating the injury or illness was work related. In an attending physician's report (Form CA-20) of the same date, Dr. Nicophene diagnosed left ankle sprain occurring on June 12, 2023. She checked a box marked "No" indicating the diagnosed conditions were not caused or aggravated by the employment activity, noting that appellant's "line of work is not why she rolled her left ankle."

In a July 7, 2023 narrative statement, appellant responded to the OWCP development letter and further described the circumstances surrounding her injury.

In a July 13, 2023 report, Dr. Nicophene discussed appellant's course of treatment and diagnosed sprain of unspecified ligament of the left ankle. She held appellant off work as there was no light-duty work available to her. In a Form CA-17 of the same date, Dr. Nicophene diagnosed left ankle sprain and recommended light-duty restrictions.

In a July 13, 2023 report, Ms. Westbrook reported that appellant was reevaluated for complaints of ankle pain. She provided examination findings and reported that appellant had completed her course of physical therapy. Ms. Westbrook noted that a magnetic resonance imaging (MRI) scan of the left ankle was pending. She diagnosed left ankle sprain and renewed appellant's physical therapy for additional sessions. In a state form report of the same date, Ms. Westbrook noted appellant's June 12, 2023 date of injury and diagnosed left ankle sprain. She checked a box indicating the injury or illness was work related.

In a July 24, 2023 medical report, Dr. Nicophene related that appellant attended physical therapy sessions from June 16 through July 24, 2023. She reported that appellant's left ankle sprain had positive results with conservative treatment showing no functional deficits and minimal pain. Dr. Nicophene advised that appellant had reached maximum medical improvement (MMI), was ready to be discharged, and could return to work. In a state form report, she noted a June 12, 2023 date of injury and diagnosed left ankle sprain. Dr. Nicophene checked a box indicating the injury or illness was work related. She reported that appellant could return to full-duty work without restrictions. In a work activity status report of the same date, Dr. Nicophene related that appellant had reached MMI on July 24, 2023 and sustained no permanent impairment. She opined that residual clinical dysfunction or residual functional loss is not anticipated for the work-related injury and appellant had no functional limitations identified or restrictions prescribed as of July 24, 2023. In a Form CA-17 of the same date, Dr. Nicophene diagnosed left ankle sprain and reported that appellant could return to full-duty work without restrictions.

By decision dated September 6, 2023, OWCP accepted that the June 12, 2023 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a left ankle condition causally related to the accepted June 12, 2023 employment incident.

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]

[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).

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 left ankle condition causally related to the accepted June 12, 2023 employment incident.

In medical reports dated June 12 through July 24, 2023, Dr. Nicophene discussed appellant's course of treatment and examination findings related to the left ankle at work on June 12, 2023. She diagnosed bilateral knee sprain, but she did not provide her own opinion on the cause of the diagnosed medical condition. 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.[10] Thus, these reports are insufficient to meet appellant's burden of proof.

Dr. Nicophene's work status reports, state form reports, Form CA-17 reports, and Form CA-20 report dated June 12 through July 24, 2023, are also insufficient to establish appellant's claim. While the physician noted a left ankle diagnosis and accompanying work restrictions, she failed to provide an opinion on the cause of appellant's left ankle injury. As noted above, 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.[11] Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also submitted treatment notes from Mr. Penna, an advanced practice registered nurse, and Ms. Wesolowski, a physician assistant, documenting treatment from June 12 through

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[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] *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).

[10] *See L.B.,* Docket No. 18-0533 (issued August 27, 2018); *D.K.,* Docket No. 17-1549 (issued July 6, 2018).

[11] *Id.*

July 13, 2023. However, certain healthcare providers such as nurses, and physician assistants are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[12] Consequently, her medical findings or opinions are insufficient to meet appellant's burden of proof.

Appellant also submitted Form CA-17 reports from an individual with an illegible signature. The Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they do not provide an indication that the person completing the report qualifies as a physician under FECA.[13] Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

The diagnostic test results submitted by appellant, including the June 12 and 16, 2023 x-ray studies of the left foot and ankle also fail to establish her claim. The Board has held that diagnostic studies, standing alone, lack probative value as they do not address whether the accepted June 12, 2023 employment incident caused the diagnosed condition.[14] Such reports are therefore insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's left ankle condition and the accepted June 12, 2023 employment incident, the Board finds that she has not met her burden of proof.[15]

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 ankle condition causally related to the accepted June 12, 2023 employment incident.

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[12] 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 R.F.*, Docket no. 24-0112 (issued April 15, 2024) (advanced practice nurses are not considered physicians as defined under FECA); *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); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

[13] *B.S.*, Docket No. 22-0918 (issued August 29, 2022); *see S.D.*, Docket No. 21-0292 (issued June 29, 2021); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[14] *F.D.*, Docket No. 19-0932 (issued October 3, 2019).

[15] *I.D.*, Docket No. 22-0848 (issued September 2, 2022); *T.G.*, Docket No. 14-751 (issued October 20, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2024
Washington, DC

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

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

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