United States Department of Labor
Employees' Compensation Appeals Board

J.E., Appellant	)	
and	)	**Docket No. 13-1098**
	)	**Issued: September 3, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Burlington, VT, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 3, 2013 appellant filed a timely appeal from a November 1, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 met her burden of proof to establish that she sustained a right foot injury on August 26, 2012 while in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. The Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

On appeal, appellant contends that she sustained an injury while in the performance of duty on August 26, 2012. She immediately reported her injury to Craig Lassiter, a supervisor. Appellant received medical treatment from a nurse practitioner, who has been her sole medical provider since 1990.

FACTUAL HISTORY

On September 7, 2012 appellant, then a 53-year-old clerk, filed a traumatic injury claim alleging that on August 26, 2012 a nail punctured her right foot while she was moving cages of parcels at work. She stopped work on September 6, 2012 and returned to work the next day.

In a September 4, 2012 medical report, Joanna Hunt, a nurse practitioner, recommended a limited work schedule, 4:00 a.m. to 10:00 a.m. from September 6 through 17, 2012, due to appellant's recent right foot injury. Thereafter, appellant could resume her usual work schedule. On September 18, 2012 Ms. Hunt reported that appellant had the flu. She recommended the previous limited work schedule through October 1, 2012 due to appellant's recent right foot injury. Thereafter, appellant could return to her usual work schedule.

By letter dated September 19, 2012, the employing establishment controverted the claim. It contended that appellant could have been exposed to sheet rock nails or other construction debris at her husband's plaster business. There were no witnesses as she was working alone at the time of injury. Appellant waited nine days before seeking medical attention. The medical evidence did not provide a diagnosis or date and mechanism of injury to establish that she sustained a work-related condition on August 26, 2012. By letter dated September 20, 2012, the employing establishment contended that accompanying unsigned discharge instructions dated September 1, 2012 from Fletcher Allen Emergency Services addressed a nonemployment-related eye injury and did not mention her August 26, 2012 right foot injury. The discharge instructions indicated that appellant was seen by Jared Leavitt, a physician's assistant, and addressed her treatment plan and follow-up care for an insect bite and conjunctivitis.

By letter dated September 27, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit additional factual and medical evidence. Appellant was asked to provide dates of examination and treatment, a history of injury given by her to a physician, a detailed description of any findings, the results of any x-rays or laboratory tests, a diagnosis and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury.

In an undated good faith recordkeeping decision sheet, the employing establishment contended that appellant did not timely report her claim or seek medical treatment and no rationale was provided for the reduction of her work hours. A supervisor who inspected the shoes worn by appellant on the date of injury found no puncture mark in the heel. On September 21, 2012 the employing establishment was advised by appellant's medical provider that there was no visual indication of a work-related injury. The health provider acknowledged that there was no medical basis for the recommended work schedule. The employing establishment noted that appellant was named as executive director of her husband's plaster business.

In a September 21, 2012 e-mail, Kathy Dyer, an employing establishment registered nurse, stated that appellant reported her right foot injury to a provider office. At the time of the first provider visit, there was no obvious injury to the painful site under the right second toe. The reported injury site had healed completely other than pain. Appellant's restricted work schedule was based on her desired work hours.

On October 5, 2012 appellant described the August 26, 2012 incident. She was pulling full cages of mail off a loading deck to the workroom floor. Appellant reported her injury in a Report of Hazard, Unsafe Condition or Practice (Form 1767) on August 26, 2012. She was the only employee at work on Sundays. On the date of injury, appellant experienced pain on the bottom of her foot. She sat down in a chair and removed a nail from her shoe. Appellant then removed her shoe and sock and inspected her foot. On August 27, 2012 her supervisor inquired about her foot injury. Appellant informed him that her foot was sore and that she would seek medical treatment if it did not resolve or if it worsened. She sought medical treatment when her condition did not resolve. Appellant was treated in an emergency room on September 1, 2012 for an eye condition that was not related to her foot injury. The accompanying August 26, 2012 Form 1767 completed by her stated that a nail went through the bottom of her shoe and stuck into her right foot.

In a November 1, 2012 decision, OWCP accepted that the August 26, 2012 incident occurred as alleged. It denied appellant's claim, however, finding insufficient medical evidence to establish that she sustained a right foot injury causally related to the accepted 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 by the weight of the reliable, probative and substantial evidence[4] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[5]

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.[6] There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7]

[3] 5 U.S.C. §§ 8101-8193.

[4] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[5] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

[7] *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[8] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[9] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[10]

ANALYSIS

OWCP accepted that on August 26, 2012 appellant pulled full cages of mail off a loading deck to the workroom floor while in the performance of duty. It found that the medical evidence failed to establish that she sustained a right foot injury as a result of the accepted incident. The Board finds that appellant failed to provide sufficient medical evidence to establish a right foot condition causally related to the August 26, 2012 employment incident.

The September 4 and 18, 2012 reports from Ms. Hunt have no probative value in establishing appellant's claim of injury. A nurse practitioner is not a "physician" as defined under FECA.[11] The Board finds, therefore, that Ms. Hunt's reports do not constitute medical evidence to support appellant's claim.

The September 1, 2012 unsigned discharge instructions from Fletcher Allen Emergency Services are also insufficient to establish appellant's claim. Reports that are unsigned or bear illegible signatures, lack proper identification and cannot be considered probative medical evidence if the author is not identified as a physician.[12] Further, the Board notes that, although the discharge instructions indicated that appellant was seen by Mr. Leavitt, a physician's assistant, a physician's assistant is not a physician as defined under FECA.[13] Mr. Leavitt's opinion regarding appellant's diagnoses is of no probative medical value.

The Board finds that there is no rationalized medical opinion of record to establish that appellant sustained a right foot injury causally related to the accepted August 26, 2012 employment incident. Appellant did not meet her burden of proof.

On appeal, appellant contended that she sustained an injury while in the performance of duty on August 26, 2012. She immediately reported her injury to her supervisor and had received medical treatment from her only medical provider, Ms. Hunt. As noted, OWCP

[8] *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).

[9] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[10] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[11] *See* 5 U.S.C. § 8101(2); *A.C.*, Docket No. 08-1453 (issued November 18, 2008).

[12] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[13] *See* 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005).

accepted that the August 26, 2012 incident occurred as alleged. For the reasons stated, the Board finds that Ms. Hunt's reports have no probative value to establish appellant's claim of injury.

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 that she sustained a right foot injury on August 26, 2011 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 1, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 3, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board