United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 17-0285**
	)	**Issued: May 25, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Queens Village, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 21, 2016 appellant, through counsel, filed a timely appeal from a September 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury causally related to the accepted October 8, 2015 employment incident.

FACTUAL HISTORY

On October 8, 2015 appellant, then a 39-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty on that date, she missed a step which caused her to step down on her left ankle and fall down. She claimed injury to her left ankle, left knee, left hand, and right hip. On the reverse side of the claim form, the employing establishment indicated that appellant had related that she sprained her right ankle, but later claimed that her left ankle was injured. It further noted that appellant had a brace on her right ankle. Appellant stopped work on October 8, 2015.

In an October 8, 2015 statement, appellant indicated "when I turned there was no step and I stepped down on my left ankle and fell to the ground on my hands and knees."

In the October 8, 2015 authorization for examination and/or treatment (Form CA-16), the injury was described as "tripped on steps, abrasion on right knee, twisted right ankle." In the attending physician's portion of the October 8, 2015 Form CA-16, Dr. Sudhir Kathuria, an internist and Board-certified radiologist, indicated that appellant fell off an uneven step. He diagnosed right ankle and heel strains and placed appellant on sedentary work. In an October 12, 2015 duty status report (Form CA-17), Dr. Kathuria indicated that on October 8, 2015 appellant had tripped on step, fell, and twisted her right ankle. A diagnosis of anterior talofibular ligament (ATFL) tear and right knee trauma was provided.

In a development letter dated October 28, 2015, OWCP notified appellant of the type of factual and medical evidence needed to substantiate her claim. It afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received an October 8, 2015 duty status report (Form CA-17) from Dr. Kathuria. Appellant's history of injury was noted as tripped on a step, fell, twisted right ankle. A right ankle sprain was diagnosed.

By decision dated December 2, 2015, OWCP denied the claim, finding that fact of injury had not been established. Specifically, it found that the history reported by appellant of a left ankle injury was inconsistent with the medical records which contained right ankle and knee diagnoses.

On December 28, 2015 OWCP received appellant's December 18, 2015 request for a telephonic hearing before OWCP's hearing representative. A telephonic hearing was held on August 10, 2016. During the hearing, appellant denied any problems with her ankles, knees, hands, and hip prior to working for the employing establishment. She testified that, on October 8, 2015, she went to place a package in the mailbox by a house and her foot slipped on the gravel, turning her right foot over, and she fell to her hands and knees. Appellant stated that she reported the incident to her supervisor while she was still on the ground and had filled out the CA-1 form at the employing establishment before seeing the doctor.

Medical records were received prior to and after the hearing. Several diagnostic tests were received. These included: an August 21, 2015 lumbar magnetic resonance imaging (MRI) scan report, which noted disc herniation at L5-S1 encroaching the right S1 nerve without compression or central stenosis; a September 1, 2015 MRI scan of the bony pelvis, which noted moderate bilateral gluteal tendinopathy and bursitis at both greater trochanters left greater than right; an October 8, 2015 right ankle x-ray, which found no evidence of an acute fracture, dislocation, or subluxation;[3] and a December 11, 2015 right wrist MRI scan, which noted subcortical cysts, bone spurs, and scarring related to prior carpal tunnel surgery involving the flexor retinaculum.

In an October 23, 2015 report, Dr. Delys St. Hill, a physiatrist, reported a history of appellant stepping off a stoop while delivering mail, twisting her right ankle, and falling to the ground. He noted that a soft cast had been placed on appellant's right ankle on the date of injury. He noted that she could not stand up because she could not put weight on her right foot. Dr. St. Hill diagnosed lumbar myofascitis, lumbar radiculopathy, right ankle sprain, and right wrist contusion.

In a December 12, 2015 report, Dr. Alfred F. Faust, an orthopedic surgeon, noted that appellant fell at work on October 8, 2015. Her past medical history included ankle swelling and carpal tunnel release. Dr. Faust diagnosed gluteal tendinitis and lumbar radiculopathy. He noted that physical therapy and injections for the hips/gluteal tendinitis had not responded long term and a lumbar MRI scan was pending.

In a December 15, 2015 report, Dr. Shyam K. Vekaria, an orthopedic surgeon, noted that Dr. Faust had referred appellant for consultation regarding her left hip. A history of a slip and fall on October 18, 2015 with injuries to the ankle, hands, and knees was provided. Dr. Vekaria noted a past history of ankle swelling and carpal tunnel release. She also noted results of a left hip MRI scan, which contained impressions of gluteal tendinopathy and bursitis. Dr. Vekaria provided an assessment of left hip abductor tendinitis and left greater trochanteric bursitis.

In a December 11, 2015 report, Dr. Joshua Mitgang, an orthopedic surgeon, noted a history of a fall on October 8, 2015. He reported that appellant slipped on loose gravel, twisting her right ankle and landing on both hands and both knees. Dr. Mitgang explained that appellant reinjured her right hand which was status post March 2015 carpal tunnel release. An assessment of closed right scaphoid fracture, right ankle sprain, and left knee medial collateral ligament sprain was provided.

Physical therapy reports were also submitted.

By decision dated September 28, 2016, an OWCP hearing representative modified OWCP's December 2, 2015 decision to accept fact of injury, but affirmed the denial of the claim as causal relationship was not established. He accepted that appellant's right foot slipped on gravel and she fell on her hands and knees based upon her testimony at the hearing. The hearing representative related that the employing establishment had not contested this description of the October 8, 2015 incident.

[3] A January 13, 2016 obstetric ultrasound was also of record. The record reflects appellant was treated on January 13, 2016 at North Shore Hospital for pregnancy and low back pain.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are 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 on a traumatic injury or an occupational disease.[6]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[7] In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[8] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 the specific employment factors identified by the claimant.[10]

Where there is medical evidence of a preexisting condition involving the same part of the body as the claimed employment injury, the issue of causal relationship invariably requires inquiry into whether there was employment-related aggravation, acceleration, or precipitation of the underlying condition.[11] Accordingly, the physician must provide a rationalized medical opinion which differentiates between the effects of the work-related injury or disease and the preexisting

[4] *Supra* note 2.

[5] *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[7] *See S.P.*, 59 ECAB 184, 188 (2007).

[8] *D.H.*, Docket No. 17-0520 (issued April 23, 2018); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[9] *Id.*

[10] *Solomon Polen*, 51 ECAB 341 (2000).

[11] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

condition.[12] Such evidence will permit the proper kind of acceptance, such as whether the employment-related aggravation was temporary or permanent.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on October 8, 2015 causally related to the accepted employment incident.

OWCP accepted that on October 8, 2015 appellant's right foot slipped on loose gravel and she fell to her hands and knees and that medical diagnoses have been provided for right ankle, wrist, back, and knee conditions, as well as a left hip condition. It denied the claim, however, as the medical evidence of record failed to establish causal relationship between the accepted employment incident and the diagnosed medical conditions.

While Dr. Kathuria diagnosed right ankle conditions, his form reports contain an inaccurate history of injury and medical history. He reported that the injury resulted from a trip and fall from a step. However, OWCP has not accepted that appellant fell from a step on October 8, 2015. The Board has held that medical reports must be based on a complete and accurate factual and medical background. Medical opinions based on an incomplete or inaccurate history are of limited probative value.[14] Moreover, Dr. Kathuria did not provide a well-rationalized medical opinion explaining how appellant's right ankle condition was causally related to her accepted employment incident of slipping on loose gravel and falling. As his description of the October 8, 2015 incident is inaccurate, his opinion pertaining to causal relationship of appellant's right ankle condition is of little probative value.[15] Therefore, Dr. Kathuria's reports are insufficient to establish causal relationship.

Dr. St. Hill diagnosed lumbar myofascitis, lumbar radiculopathy, right ankle sprain, and right wrist contusion. However, she reported an inaccurate history of injury of appellant stepping off a stoop and offered no explanation as to how the accepted October 8, 2015 work incident caused or contributed to the diagnosed conditions.[16] Furthermore, as the back condition appears to be a preexisting condition affecting the same part of the body where a work injury or illness is claimed, Dr. St. Hill failed to provide a rationalized medical opinion which differentiates between the effects of the employment-related injury or disease and the preexisting back condition.[17] She did not provide a medically sound explanation of how the accepted October 8, 2015 work incident caused or aggravated her conditions. This is especially important because appellant had evidence

[12] *Id.*

[13] *Id.*

[14] *C.L.*, Docket No. 14-1585 (issued December 16, 2014); *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

[15] *See F.H.*, Docket No. 16-0204 (issued April 8, 2016).

[16] *Id.*

[17] *See M.W.*, Docket No. 15-0082 (issued March 9, 2015).

of a preexisting condition.[18] Therefore, Dr. St. Hill's report is insufficient to establish appellant's claim.

Dr. Faust noted that appellant fell at work on October 8, 2015. While he diagnosed gluteal tendinitis and lumbar radiculopathy, he provided no rationalized explanation supported by objective findings to establish how the diagnosed conditions were caused or aggravated by the October 8, 2015 work incident.[19] Dr. Faust also does not distinguish the effects of appellant's preexisting back conditions from the October 8, 2015 work incident.[20] His report therefore is insufficient to establish that appellant's diagnosed conditions are causally related to the October 8, 2015 work incident.[21]

Dr. Vekaria provided an accurate history of a slip and fall on October 18, 2015 and also noted a history of carpal tunnel release. She discussed the results of a left hip MRI scan and provided an assessment of left hip abductor tendinitis and left greater trochanteric bursitis. However, Dr. Vekaria failed to explain how left hip tendinitis was causally related to the October 8, 2015 work incident. A medical opinion should reflect a correct history and offer a medically sound explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions.[22] Accordingly, Dr. Vekaria's report is insufficient to establish appellant's claim.

In a December 11, 2015 report, Dr. Mitgang noted an accurate history of a fall on October 8, 2015. He reported that appellant slipped on loose gravel, twisting her right ankle, and landing on both hands and both knees. Dr. Mitgang indicated that she reinjured her right hand which was status post March 2015 carpal tunnel release. He provided an assessment of closed right scaphoid fracture, right ankle sprain, and left knee medial collateral ligament sprain. Dr. Mitgang, however, failed to explain how the diagnosed conditions resulted from the October 8, 2015 work incident. Absent an explanation, Dr. Mitgang's report is insufficient to establish causal relationship.[23]

Also of record are reports and records from physical therapists. However, physical therapists are not considered physicians under FECA and are not competent to render a medical opinion.[24] Thus, these reports are insufficient to establish appellant's claim.

[18] *See S.D.*, Docket No. 16-0999 (issued October 16, 2017).

[19] *See supra* note 11.

[20] *Id*.

[21] *T.W.*, Docket No. 15-1603 (issued October 20, 2015).

[22] *See J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[23] *Id.*

[24] *See David P. Sawchuk* , 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

The diagnostic testing of record is also of diminished probative value and is insufficient to establish appellant's claim as diagnostic testing does not provide an opinion on the cause of the diagnosed conditions.[25]

Accordingly, the medical evidence of record is without a well-rationalized medical opinion establishing that the diagnosed conditions are causally related to the accepted October 8, 2015 employment incident. OWCP advised appellant that it was her responsibility to provide a comprehensive medical report explaining how the diagnosed medical condition was caused by the accepted employment incident. Appellant failed to submit appropriate medical documentation in response to OWCP's request.[26]

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[27] An award of compensation may not be based on surmise, conjecture, speculation, or upon appellant's own belief that there was a causal relationship between his or her condition and his or her employment.[28] Causal relationship must be based on rationalized medical opinion evidence.[29] As appellant has not submitted a rationalized medical opinion supporting that her diagnosed conditions were causally related to the accepted October 8, 2015 employment incident, she did not meet her burden of proof to establish an employment-related traumatic injury.

On appeal counsel argues that OWCP's decision is boilerplate and contains no analysis or rationalization. Based on the findings and reasons stated above, the Board finds that counsel's arguments are not substantiated.[30]

Finally, the Board notes that the employing establishment executed a Form CA-16 on October 8, 2015 authorizing medical treatment. The Board has held that where an employing establishment properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim.[31] Although OWCP denied appellant's claim for an injury, it did

[25] *See C.P.*, Docket No. 15-0600 (issued June 2, 2015).

[26] *See D.B.*, Docket No. 16-1219 (issued November 8, 2016); *see also T.H.*, Docket No. 15-0772 (issued May 12, 2016).

[27] *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

[28] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

[29] *M.E.*, Docket No. 14-1064 (issued September 29, 2014).

[30] *See E.L.*, Docket No. 16-0635 (issued November 7, 2016).

[31] *See R.B.*, Docket No. 16-0885 (issued November 25, 2016); *D.M.*, Docket No. 13-0535 (issued June 6, 2013). *See also* 20 C.F.R. §§ 10.300 and 10.304.

not address whether she is entitled to reimbursement of medical expenses pursuant to the Form CA-16. The Board finds that, upon return of the case record, this matter should be addressed.[32]

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 established an injury causally related to the accepted October 8, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 28, 2016 is affirmed.

Issued: May 25, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[32] *See R.B., id.*; *see also T.K.,* Docket No. 16-0813 (issued July 20, 2016).