United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 11-869**
	)	**Issued: February 27, 2012**
U.S. POSTAL SERVICE, POST OFFICE, Charlottesville, VA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 16, 2011 appellant filed a timely appeal from an August 25, 2010 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 the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on May 26, 2008.

FACTUAL HISTORY

On July 15, 2009 appellant, then a 41-year-old city letter carrier, filed a traumatic injury claim alleging that she was servicing a neighborhood delivery and collection box unit on

[1] 5 U.S.C. § 8101 *et seq.*

May 26, 2008 when she stepped into a hole and twisted her left ankle. She specified in a June 25, 2009 statement that she remained symptomatic.[2]

OWCP informed appellant in a July 27, 2009 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the alleged May 26, 2008 incident and a medical report from a physician explaining how this event caused or contributed to her ankle condition.

A series of August 19, 2008 radiographs obtained by Drs. Pradeep Rajagopalan and Jeffrey D. Stanczak, Board-certified diagnostic radiologists, did not exhibit a fracture or dislocation of either ankle.

In a March 24, 2009 treatment note, Dr. Verna Luz Cabigas Guanzon, a Board-certified family practitioner, related that appellant experienced left lateral foot pain since May 2008. Following a magnetic resonance imaging (MRI) scan of the left ankle, she diagnosed plantar fasciitis with partial tear, subtle stress fracture around the plantar medial aspect, possible peroneus longus tendinopathy, Achilles tendon enthesophytes and degenerative Lisfranc joint changes in an April 14, 2009 note.[3] Dr. Guanzon pointed out in a June 19, 2009 note that appellant was scheduled for left ankle arthroscopy on June 29, 2009.

Dr. Peter J. Bower, a Board-certified family practitioner, remarked in an April 8, 2009 report that appellant sustained a left ankle inversion injury, resulting in mechanical instability. He observed pain, swelling and tenderness on palpation of the anterior fibulotalar, bifurcate and dorsal calcaneocuboid ligaments as well as hypermobility and enthesopathy.

In a May 22, 2009 report, Dr. Joseph R. Disabato, a podiatrist, noted that appellant sustained a twisting injury to her left ankle in May 2008. On examination, he observed pain on palpation of the anterior talofibular ligament and sinus tarsi region and positive anterior drawer and talar tilt signs. Dr. Disabato diagnosed left foot sinus tarsitis, ankle synovitis and torn anterior talofibular ligament.[4]

On June 29, 2009 Dr. Disabato performed plantar fasciotomy, synovectomy, fibrous band debridement and anterior tibial process osteotomy. Postoperative notes from July 1 to August 10, 2009 indicated that appellant's condition improved.

In a report dated August 7, 2009, Dr. David E. Brents, a chiropractor, attributed appellant's left leg and ankle pain to "excessive walking while on the job" and determined that

[2] Appellant reiterated her account in two subsequent statements. She also indicated that she previously received benefits for left lateral epicondylitis. This condition is not presently before the Board.

[3] Dr. Guanzon essentially adopted the impressions contained in Dr. Stanczak's April 13, 2009 MRI scan report, which is part of the case record.

[4] Dr. Disabato's June 5, 2009 follow-up note contained identical findings.

her symptoms were consistent with overuse. He added that she stepped into a hole at some point and that her injury was exacerbated by uneven surfaces and fatigue.[5]

By decision dated August 31, 2009, OWCP denied appellant's claim, finding the evidence insufficient to demonstrate that the May 26, 2008 employment incident occurred as alleged.

Douglas Sughrue, appellant's then counsel, requested reconsideration on August 7, 2010 and submitted new medical evidence. In a May 19, 2010 note, Dr. Disabato diagnosed left plantar fasciitis and calcaneal exostosis based on x-ray results.

In a June 11, 2010 report, Dr. Disabato restated appellant's account that she twisted her left foot at work on May 26, 2008 when she stepped into a hole. He noted that, while the left ankle was stable and asymptomatic after undergoing surgery, appellant later experienced persistent heel and arch pain. Dr. Disabato commented, "It is my opinion that the injury she sustained on May 26, 2008 is consistent with the clinical and operative finding[s] I encountered." Due to the significant amount of standing, walking, and carrying that appellant's job entailed, he restricted her to sedentary activity.

In a July 16, 2010 work restriction note, Dr. Disabato indicated that the employing establishment no longer offered appellant modified work. He released her to full-time duty at her request and against his medical advice.

On August 25, 2010 OWCP modified the August 31, 2009 decision to find that the May 26, 2008 employment incident occurred as alleged. It denied appellant's claim on the grounds that the medical evidence did not sufficiently establish that the accepted work event was causally related to her condition.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,[6] including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.[7] The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.[8]

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. First, the employee must

[5] In addition, appellant provided hospital and physical therapy records for the period April 15 to June 29, 2009.

[6] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[7] *R.C.*, 59 ECAB 427 (2008).

[8] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's 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, 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]

ANALYSIS

The record supports that appellant was servicing a neighborhood delivery and collection box unit on May 26, 2008 when she stepped into a hole with her left leg. The Board finds that she failed to establish her traumatic injury claim because the medical evidence was insufficient to establish that the accepted employment incident caused or contributed to her left ankle condition.

Dr. Disabato, the podiatrist, operated on appellant's left foot. He related in a May 22, 2009 report that the injury, which resulted in diagnosed sinus tarsitis, ankle synovitis and torn anterior talofibular ligament, occurred in May 2008. In a June 11, 2010 report, Dr. Disabato repeated appellant's account that she stepped into a hole and twisted her left foot on May 26, 2008 while in the performance of duty. He concluded that "the injury she sustained on May 26, 2008 is consistent with the clinical and operative finding[s] I encountered." This opinion, however, merely conveyed appellant's belief regarding causal relationship.[11] Dr. Disabato did not present adequate medical rationale explaining how the May 26, 2008 employment incident was sufficient to cause the diagnosed conditions.[12]

In an August 7, 2009 report, Dr. Brents directly attributed appellant's left foot condition to her job duties. Medical opinion, in general, can only be given by a qualified physician.[13] As defined under FECA, a "physician" includes a chiropractor only to the extent that his reimbursable services are limited to treatment consisting of manual manipulation of the spine to

[9] *T.H.*, 59 ECAB 388 (2008).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See P.K.*, Docket No. 08-2551 (issued June 2, 2009) (an award of compensation may not be based on a claimant's belief of causal relationship).

[12] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (a medical opinion not fortified by medical rationale is of little probative value).

[13] *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

correct a subluxation as demonstrated by x-ray to exist.[14] Because Dr. Brents did not treat or diagnose spinal subluxation, he is not a physician and his opinion regarding causal relationship lacked any probative value.[15]

The remaining medical records from Drs. Bower, Disabato, Guanzon, Rajagopalan and Stanczak were of diminished probative value because none of the physicians provided an opinion on causal relationship.[16] In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that the medical evidence, namely Dr. Disabato's June 11, 2010 report, showed that her left foot condition resulted from her federal employment. As noted, the medical evidence did not sufficiently establish that the accepted May 26, 2008 employment incident was causally related to her injury.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury in the performance of duty on May 26, 2008.

[14] 5 U.S.C. § 8101(2); *Merton J. Sills*, 39 ECAB 572, 575 (1988). Subluxation means an incomplete dislocation, off-centering, misalignment, fixation, or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

[15] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[16] *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: February 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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