

FACTUAL HISTORY

On June 12, 2012 appellant, then a 57-year-old law enforcement specialist, filed a traumatic injury claim alleging that she sustained a left foot sprain when she tripped on uneven pavement in the back parking lot of her work premises.³ She stopped work on June 8, 2012 and returned on June 12, 2012.

In support of her claim, appellant submitted June 8, 2012 x-rays of her left foot, containing an impression of “no fracture identified” and a recitation of “foot pain” under signs and symptoms.⁴ She also submitted June 8, 2012 treatment notes from attending physician’s assistants, Deborah Governale and Richard Dooley; June 19, 2012 treatment notes from an attending advanced practical nurse, Patricia Towle; September 7, October 10 and December 12, 2012 treatment notes from an attending nurse practitioner, Carol Blattspieler; and physical therapy notes dated between September 10 and October 13, 2012.

In a January 23, 2013 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. Appellant was advised regarding the need to submit medical evidence from a physician under FECA.

Appellant resubmitted a copy of the December 12, 2012 notes of Ms. Blattspieler.

In a February 27, 2013, OWCP denied appellant’s claim for a June 8, 2012 work injury on the grounds that she did not submit sufficient probative medical evidence to support the occurrence of such an injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained 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 compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

³ On the same form, appellant’s supervisor checked a box indicating that the claimed injury occurred in the performance of duty. Appellant submitted the statement of a coworker who witnessed the claimed injury.

⁴ The x-ray findings were signed by an attending physician and contained a history of the June 8, 2012 work incident.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. § 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. 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 Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.⁹

Under FECA, the reports of nonphysicians, such nurses and physician's assistants, do not constitute probative medical evidence.¹⁰ Physical therapists also are not physicians under FECA and are not qualified to provide the necessary medical evidence to meet a claimant's burden of proof.¹¹

ANALYSIS

On June 12, 2012 appellant filed a traumatic injury claim alleging that she sustained a left foot sprain when she tripped on uneven pavement. The Board finds that, although she established the factual aspect of her claim, she did not submit sufficient probative medical evidence to support that she sustained a medical condition due to the accepted incident.

In support of her claim, appellant submitted June 8, 2012 x-rays of her left foot, containing an impression of "no fracture identified" and a recitation of "foot pain" under signs and symptoms. Although the document was signed by a physician and contains a history of the June 8, 2012 work incident, it would not support appellant's claim because it does not contain a diagnosis or an opinion on the cause of any observed condition. The phrase "foot pain" merely refers to appellant's reported symptoms rather than a diagnosis.

Appellant also submitted June 8, 2012 treatment notes from attending physician's assistants; June 19, 2012 treatment notes from an attending advanced practical nurse; September 7, October 10 and December 12, 2012 treatment notes from an attending nurse

⁷ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁸ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, *id.*

⁹ See *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

¹⁰ See *L.L.*, Docket No. 13-829 (issued August 20, 2013); *Bertha L. Arnold*, 38 ECAB 282, 285 (1986); 5 U.S.C. § 8101(2).

¹¹ *Jane A. White*, 34 ECAB 515, 518-19 (1983).

practitioner; and physical therapy notes dated between September 10 and October 13, 2012. However, these reports were all produced by nonphysicians under FECA and would not constitute probative medical evidence on the main issue of this case.¹² For these reasons, appellant did not meet her burden of proof to establish that she sustained a work-related injury on June 8, 2012.

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 did not meet her burden of proof to establish that she sustained an injury in the performance of duty on June 8, 2012.

ORDER

IT IS HEREBY ORDERED THAT the February 27, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹² See *supra* notes 9 and 10.