

**United States Department of Labor
Employees' Compensation Appeals Board**

A.Q., Appellant)

and)

U.S. POSTAL SERVICE, POSTAL ANNEX,)
Miami, FL, Employer)

**Docket No. 14-1782
Issued: December 3, 2014**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 11, 2014 appellant, through his attorney, filed a timely appeal from a June 6, 2014 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish left ankle and right knee injuries on April 10, 2013 while in the performance of duty.

FACTUAL HISTORY

On April 16, 2013 appellant, then a 36-year-old city carrier assistant, filed a traumatic injury claim alleging that he experienced left ankle pain when he finished his route on April 10, 2013. He stopped work on April 11, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

In an April 16, 2013 duty status form report, Dr. Caio N. Goncalves, a Board-certified family practitioner, provided a history that appellant injured his left ankle on April 10, 2013. He also provided findings on physical examination and diagnosed a sprained left ankle and right knee due to the April 10, 2013 incident. Dr. Goncalves advised that appellant could return to work with limitations. He reiterated his diagnoses and physical limitations in an April 16, 2013 Florida workers' compensation form report.

In an April 23, 2013 medical report, Dr. John D. Baldino, a cardiovascular disease specialist, indicated that appellant's ankle was being rechecked following treatment in an emergency room seven days ago. He provided a history of his medical treatment, social and family background. Dr. Baldino listed findings on physical and x-ray examination and provided a clinical impression of sprain check. In another report dated April 23, 2013, he referred appellant to an orthopedist/podiatrist. Dr. Baldino advised that he had not reached maximum medical improvement. Appellant could not work until he was cleared by the specialist.

By letters and an e-mail dated April 16, 2013, employing establishment supervisors controverted appellant's claim, contending that he did not report his injury to them prior to that day.

By letter dated April 25, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It notified him of the deficiencies of his claim and afforded him 30 days to submit additional medical evidence. OWCP also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

In an April 16, 2013 narrative report, Dr. Goncalves provided a history that appellant sustained a twisting injury while possibly walking at work three days ago. He reported a history of his medical and social background. Dr. Goncalves listed findings on physical and x-ray examination and reiterated his prior diagnoses of sprained right knee and left ankle.

In an April 16, 2013 right knee x-ray report, Dr. Leon Adler, a radiologist, found no acute process. In a left ankle x-ray report also dated April 16, 2013, he found no evidence of fracture or dislocation.

Unsigned reports dated April 16 and 23, 2013 contained the printed name of Anisleydi Padron, a registered nurse, and provided physical examination findings and discharge instructions related to appellant's right knee and left ankle conditions.

Hospital instructions signed on April 23, 2013 by a registered nurse whose signature is illegible indicated that appellant was evaluated by Dr. Baldino for a sprain check and that he underwent diagnostic studies and a pulse oximetry on that day. The instructions listed his medications and recommended that he follow up with an orthopedic surgeon or podiatrist.

In a June 7, 2013 decision, OWCP accepted that the April 10, 2013 incident occurred as alleged. It denied appellant's claim, however, finding that the medical evidence of record failed to establish that his left ankle and right knee conditions were causally related to the accepted employment incident.

On June 25, 2013 appellant requested an oral hearing before an OWCP hearing representative.

An April 16, 2013 form report cosigned by the same nurse whose signature is illegible and Dr. Goncalves addressed the treatment of appellant's left ankle and right knee conditions.

In a May 8, 2013 report, Dr. Jorge M. Cabrera, a Board-certified orthopedic surgeon, provided a history of the April 10, 2013 employment incident, and appellant's medical treatment, social and family background. He listed findings on physical and x-ray examination and provided an impression of left ankle sprain.

By letter dated November 8, 2013, appellant's attorney requested a telephone hearing rather than an oral hearing with an OWCP hearing representative.

In a February 10, 2014 decision, an OWCP hearing representative affirmed the June 7, 2013 decision. She found that the medical evidence of record was not sufficiently rationalized to establish that appellant sustained an injury causally related to the accepted April 10, 2013 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence³ 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.⁴

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.⁵ 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.⁶

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁷ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁴ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁷ *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).

medical background, showing a causal relationship between the claimed condition and the identified factors.⁸ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁹

ANALYSIS

OWCP accepted that the April 10, 2013 incident occurred while appellant was in the performance of duty but it found that the medical evidence failed to establish injuries as a result of the accepted employment incident. The Board finds that appellant failed to provide sufficient medical evidence to establish left ankle and right knee injuries causally related to the accepted April 10, 2013 employment incident.

Dr. Goncalves' April 16, 2013 duty status form report found that appellant sustained a sprained left ankle and right knee due to the April 10, 2013 employment incident. Dr. Goncalves did not explain how the accepted employment incident caused or contributed to appellant's right knee and left ankle conditions. The Board has found that medical opinion not based and not fortified by medical rationale is of diminished probative value.¹⁰ Without medical rationale explaining how the accepted employment incident supported Dr. Goncalves' opinion on causal relationship, the Board finds that his April 16, 2013 report is insufficient to establish appellant's claim. The remaining reports from Dr. Goncalves reiterated his diagnoses of sprained right knee and left ankle. The history of injury he provided was speculative. Dr. Goncalves provided findings on examination and addressed appellant's medical treatment. However, he did not opine that his conditions were causally related to the accepted April 10, 2013 employment incident. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹¹ The Board finds that Dr. Goncalves' reports are insufficient to establish appellant's claim.

Dr. Cabrera's May 8, 2013 report found that appellant had a left ankle sprain. While he provided a history of the April 10, 2013 employment incident, he failed to provide a medical opinion addressing whether the accepted employment incident caused or contributed to the diagnosed condition.¹² The Board finds that Dr. Cabrera's report is insufficient to establish appellant's claim.

Dr. Baldino's April 23, 2013 reports found that appellant had an ankle sprain and that he was disabled for work until he was cleared by a specialist to whom he referred him for examination. However, he did not provide any history of injury,¹³ or offer a specific opinion as

⁸ *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

⁹ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹⁰ *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹¹ *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006).

¹² *Id.*

¹³ *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history have little probative value).

to how the accepted employment incident caused or contributed to appellant's condition.¹⁴ Consequently, the Board finds that Dr. Baldino's reports are of limited probative value and do not establish appellant's claim.

Similarly, the diagnostic test results of Dr. Adler are insufficient to establish appellant's claim. Dr. Adler addressed appellant's right knee and left ankle conditions, but failed to provide an opinion addressing whether his diagnosed conditions were caused or contributed to by the April 10, 2013 employment incident.¹⁵ The Board finds, therefore, that his reports are insufficient to establish appellant's claim.

The unsigned report which contained the printed name of Nurse Padron and hospital instructions which contained the illegible signature of a registered nurse have no probative value as a nurse is not a physician as defined under FECA.¹⁶ The Board finds that there is insufficient medical evidence of record to establish that appellant sustained left ankle and right knee injuries causally related to the accepted April 10, 2013 employment incident.

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 his burden of proof to establish left ankle and right knee injuries on April 10, 2013 while in the performance of duty.

¹⁴ See cases cited, *supra* note 11.

¹⁵ *Id.*

¹⁶ The term 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); *M.B.*, Docket No. 12-1695 (issued January 29, 2013).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board