United States Department of Labor
Employees' Compensation Appeals Board

D.D., Appellant	)	
and	)	**Docket No. 16-1472**
	)	**Issued: December 21, 2016**
U.S. POSTAL SERVICE, POST OFFICE, Warrendale, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 11, 2016 appellant, filed a timely appeal from a March 22, 2016 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a left ankle injury causally related to a November 4, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] With his request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 11, 2015 appellant, then a 59-year-old mail handler and equipment operator, filed a traumatic injury claim (Form CA-1), alleging that, while exiting the building at 1:26 p.m. on November 4, 2015, he felt a sharp pain in his left ankle and thought he had been struck by an object. He stopped work on November 5, 2015. The employing establishment challenged the claim.

Appellant submitted witness statements from Coworker M.S. dated November 9, 2015, who noted that on November 4, 2016, while exiting the building, he heard appellant indicate that something hit him in the leg. Another witness statement from Coworker C.H. indicated that on November 4, 2015, while exiting the building, she noticed appellant limping and he acknowledged being hurt.

By letter dated November 19, 2015, OWCP advised appellant of the type of evidence needed to establish his claim, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician.

Appellant subsequently provided medical evidence. He was treated in the emergency room by Dr. Reginald I. Reginella, an osteopath, on November 5, 2015, for left ankle pain which started on November 4, 2015. Appellant reported that he was walking when he heard a pop and felt immediate pain. His history was significant for three left distal metatarsal and toe surgeries. Dr. Reginella noted findings of moderate left ankle pain on weight bearing and movement and swelling of the left deltoid ligament. An x-ray of the left ankle revealed no abnormalities. Dr. Reginella diagnosed left ankle sprain and placed appellant in an air splint and discharged him home. On November 5, 2015 appellant was provided with discharge instructions for an ankle sprain.

Appellant submitted a workers' compensation form dated November 5, 2015 and reported that on November 4, 2015, while walking out of the employing establishment, he felt pain in his ankle. A nonidentified medical provider diagnosed left ankle sprain and returned appellant to work on November 5, 2015 with restrictions.

Appellant was treated by a physician assistant on November 12, 2015 for left lateral ankle pain over the peroneal tendon region. He reported exiting work on November 4, 2015 when he felt a sharp pain in the left lateral posterior ankle. The physician assistant noted that appellant's medical history was significant for neuropathy, chronic decreased sensation of the foot, and prior surgical procedures on the foot and ankle. He noted findings and diagnosed left lateral ankle pain with underlying degenerative change, possible peroneal tendon injury and neuropathy of the foot. In a November 12, 2015 form report, the physician assistant diagnosed degenerative joint disease of the left ankle and foot with neuropathy. He noted that appellant was unable to work due to the injury of November 4, 2015.

In a statement dated December 3, 2015, P.S., the employing establishment plant safety specialist, noted that appellant's tour of duty was 5:00 a.m. to 1:25 p.m. and he claimed his injury occurred at 1:26 p.m. She indicated that when the alleged injury occurred appellant did

not report it to management. P.S. noted that when appellant's injury was reported the exit area was inspected and nothing was discovered that could have struck appellant. She further noted that appellant has not returned to work since November 4, 2015. The employing establishment submitted an accident sketch.

In a December 21, 2015 decision, OWCP denied appellant's claim finding that the evidence submitted failed to support that the injury or events occurred as alleged.

Appellant provided a December 23, 2015 response to OWCP's November 19, 2015 letter. He noted that on November 5, 2015 he reported his injury to his union representative who immediately informed management. Appellant clarified that he was not struck by an object but felt as if an object struck him. He advised that the injury occurred right after he "punched out" for the day and was walking down a workplace hallway toward a building exit when he felt a sharp ankle pain.

On January 4, 2016 appellant requested reconsideration. He provided additional medical evidence. A December 12, 2015 magnetic resonance imaging (MRI) scan of the left ankle revealed peroneus longus tendon rupture, degenerative changes of the tibiotalar and talonavicular joints, bone contusion affecting the cuboid bone and calcaneus, plantar fascia degeneration and atrophy of the abductor digit minima muscle, and chronic injury to the lateral ligament complex.

Appellant came under the treatment of Dr. William E. Saar, an osteopath, on December 17, 2015, who treated him for left ankle and foot pain. Dr. Saar noted that appellant sustained a work-related injury on November 4, 2015 when he was walking through his workplace and felt a "pop" on the outside of his ankle. Appellant reported multiple surgeries on his left foot for unrelated forefoot issues. Dr. Saar noted findings that included venous stasis throughout the foot and ankle region, mild swelling and ecchymosis, mild tenderness to palpation over the course of the distal fibula and retromalleolar region, minimal weakness, and sensation was diminished globally secondary to neuropathy. He diagnosed left ankle peroneus longus rupture.

On February 8, 2016 Dr. Saar noted that appellant had a work-related injury on November 4, 2015 when he was walking from his workplace and felt a "pop" on the outside of his ankle. Appellant reported prior surgical procedures on the forefoot but he had no significant history of any injury in or around the area of the peroneal tendon region. Dr. Saar performed surgery with repair of the peroneus longus tendon. He noted that appellant had no significant issues with the lateral aspect of the ankle and there were no medical records provided that would indicate that he had an ongoing chronic issue. Dr. Saar noted that appellant distinctly reported a work-related injury on November 4, 2015 when he was walking from his workplace to his car. He opined that the tendon rupture and bone contusion in and around the area of the cuboid bone was an acute injury, unrelated to a preexisting condition.

In a report dated February 16, 2016, Dr. Saar noted that appellant was status post six weeks from his peroneal tendon surgery and reported minimal pain secondary to neuropathy. He noted findings of a healed incision, preexisting neuropathy in the area and diminished sensation. Dr. Saar diagnosed status post left peroneal tendon rupture with repair/tendinosis. In a form

report dated February 17, 2016, he diagnosed status post left peroneal tendon rupture with repair/tendinosis. Dr. Saar noted that appellant was off work.[3]

In a decision dated March 22, 2016, OWCP modified the December 21, 2015 decision finding that the evidence established the claimed work incident of November 4, 2015. However, the medical evidence was insufficient to establish a causal relationship between the employment incident of November 4, 2015 and a medical condition.

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 filed within the applicable time limitation 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.[6]

ANALYSIS

It is not disputed that on November 4, 2015 appellant was walking out of the employing establishment building when he experienced left ankle pain. However, the Board finds that

[3] Additional reports were also submitted from a physician assistant associated with Dr. Saar. In a December 14, 2015 report, the physician assistant diagnosed left peroneal tendon tear. He noted that appellant was off work until further notice. On December 22, 2015 the physician assistant noted that appellant presented for evaluation of a possible left ankle peroneal longus debridement repair. On March 9, 2016 he noted that appellant was nine weeks post left peroneal tendon debridement and repair. Appellant was in physical therapy and was fully weight bearing in a boot. The physician assistant released appellant to light duty.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

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

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

appellant has not submitted sufficient medical evidence to establish that this work activity caused or aggravated his diagnosed left ankle condition.

Appellant was treated by Dr. Saar on December 17, 2015 for left ankle and foot pain. Dr. Saar noted that appellant sustained a work-related injury on November 4, 2015 when he was walking through his workplace and felt a "pop" on the outside of his ankle. He noted that multiple healed incisions over the forefoot region and diminished sensation globally secondary to neuropathy. Dr. Saar diagnosed left ankle peroneus longus rupture. On February 8, 2016 he noted that appellant's history and diagnoses, noting that appellant recently had surgery to repair the peroneus longus tendon. Dr. Saar indicated that appellant had multiple previous surgeries on the forefoot but they were unrelated to the current condition. He noted that appellant distinctly reported a work-related injury on November 4, 2015 when he was walking from his workplace to his car. Dr. Saar opined that appellant's injury was not related to a preexisting condition as there were no medical records provided to indicate an ongoing chronic issue. Although he supported causal relationship, Dr. Saar did not provide sufficient medical rationale explaining the basis of his conclusion opinion regarding the causal relationship between appellant's diagnosed conditions and his work duties.[7] He did not provide the medical reasoning, or rationale that formed the basis of his conclusion on causal relationship. Dr. Saar did not specifically explain how walking on November 4, 2015 caused or aggravated the diagnosed condition, nor did he sufficiently address whether the diagnosed condition was caused by nonwork-related factors, such as appellant's preexisting left foot conditions, for which he had multiple surgeries. Therefore, this evidence is insufficient to meet appellant's burden of proof.[8]

On November 5, 2015 appellant was treated in the emergency room by Dr. Reginella for left ankle pain which began after appellant was walking out of his office building and heard a pop and felt immediate pain. Dr. Reginella diagnosed sprain of the left ankle and placed appellant in an air splint. However, he merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Reginella is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's left ankle condition and the factors of employment believed to have caused or contributed to such condition.[9] Therefore, this report is insufficient to meet appellant's burden of proof.

The remainder of the medical evidence is of limited probative value as it does not provide an opinion on the causal relationship between the November 4, 2015 work incident and appellant's diagnosed medical conditions.[10]

[7] *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[8] *See L.D.*, Docket No. 09-1503 (issued April 15, 2010) (the fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two).

[9] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[10] *See id.*

Appellant also submitted a November 5, 2015 form report from a nonidentified medical provider. There is no evidence that this document is from a physician. Medical documents not signed by a physician are not probative medical evidence and do not establish appellant's claim.[11] With regard to the physician assistant reports, the Board has held that documents signed by a physician assistant are not considered medical evidence as a physician assistant is not a physician under FECA.[12] Thus, these documents are of no probative medical value in establishing appellant's claim.

Consequently, appellant has submitted insufficient medical evidence to establish that appellant's work activities on November 4, 2015 caused or aggravated a diagnosed medical condition.

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 his burden of proof to establish a left ankle injury causally related to a November 4, 2015 employment incident.

[11] *See R.M.*, 59 ECAB 690 (2008); *Bradford L. Sullivan*, 33 ECAB 1568 (1982) (where the Board held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in FECA).

[12] *See David P. Sawchuk*, 57 ECAB 316, 320 n.11 (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).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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