

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

F.D., Appellant)	
)	
and)	Docket No. 16-0183
)	Issued: February 18, 2016
U.S. POSTAL SERVICE, MANAGER)	
INTERNATIONAL SERVICE CENTER,)	
Los Angeles, CA, Employer)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 3, 2015 appellant filed a timely appeal from a May 7, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this case.³

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from May 7, 2015, the date of OWCP's last decision was November 3, 2015. Since using November 10, 2015, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is November 3, 2015, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the issuance of the May 7, 2015 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has met her burden of proof to establish left knee, instep, and left elbow injuries on March 29, 2015 while in the performance of duty.

On appeal, appellant contends that her claim was incorrectly denied based on the employing establishment's description of the incident that caused her claimed employment-related injuries, which differed from her description of injury provided in her traumatic injury claim (Form CA-1).

FACTUAL HISTORY

On March 30, 2015 appellant, then a 49-year-old regular mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 29, 2015 she experienced pain in her left knee, instep, and elbow while dumping a loader at work.

In a March 30, 2015 medical report, Dr. Stephen R. Greene, an internist, diagnosed left elbow, left knee, and left ankle strains. He placed appellant off work for the remainder of the day. Thereafter, she was returned to regular work without restrictions.

By letter dated April 2, 2015, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional medical evidence. It also requested that the employing establishment submit medical evidence, if appellant had been treated at its medical facility.

An authorization for examination and/or treatment (Form CA-16) was signed and issued by the employing establishment on March 30, 2015. It authorized appellant to obtain treatment from Dr. Susannah M. Ehret, a Board-certified internist, for a March 29, 2015 injury.⁴

In an April 1, 2015 letter, Sony Naing, a nurse practitioner, certified that appellant was unable to work due to a work-related injury that occurred on March 29, 2015. She requested that appellant be excused from work from March 31 to April 21, 2015.

An undated State of California Doctor's First Report of Occupational Injury or Illness form signed by Dr. Ehret provided appellant's account of injury. Appellant was loading a mail cargo container into a loader, but due to equipment error the container was unable to cross into the loader. As a result, she experienced pain in her left shoulder, hip, knee, and ankle. Dr. Ehret noted appellant's current complaints of pain in the left shoulder and left low back, sciatica in the left lower extremity, swelling, pain, and edema in the left knee, poor gait, and left ankle pain with movement. She reported findings on examination and diagnosed a sprain and strain of an unspecified site. Dr. Ehret indicated with an affirmative mark that her findings and diagnoses were consistent with appellant's account of injury or onset of illness. She advised that appellant was unable to perform her usual work at that time, but appellant could return to regular work on May 1, 2015. In an April 20, 2015 letter, Dr. Ehret noted that she saw appellant on April 2, 2015

⁴ A properly completed CA-16 form can create a contractual agreement for payment of medical treatment even if the claim is not ultimately accepted. OWCP has not made a finding as to whether this form properly authorized treatment. See *Tracy P. Spillane*, 54 ECAB 608 (2003); 20 C.F.R. § 10.300.

for a follow-up visit regarding her March 29, 2015 injury. She advised that appellant could return to work on May 13, 2015.

In a State of California Doctor's First Report of Occupational Injury or Illness form and a narrative report dated March 30, 2015, Dr. Greene obtained a history that on March 29, 2015 appellant was loading a 300-pound cargo container of mail onto a dumper when it pushed back onto her. He provided her medical and social background and provided findings on examination. Dr. Greene reviewed results of left ankle and left knee x-rays performed on the date of his examination. He reiterated his prior diagnoses of left elbow strain, left knee strain, and left ankle strain. Dr. Greene also reiterated his prior opinion that appellant could perform her regular work with no restrictions.

In a May 7, 2015 decision, OWCP accepted that the March 29, 2015 incident occurred as alleged. However, it denied the claim as the medical evidence failed to establish a causal relationship between her diagnosed conditions and the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence⁶ 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.⁷

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.⁸ 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.⁹

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.¹⁰ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁹ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

¹⁰ *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).

identified factors.¹¹ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.¹²

ANALYSIS

The evidence supports that appellant was dumping a loader as alleged on March 29, 2015. However, the Board finds that appellant has not met her burden of proof to establish a traumatic injury was caused by the March 29, 2015 employment incident. Appellant failed to submit sufficient medical evidence to establish that she had left knee, left foot, and left elbow injuries causally related to the accepted employment incident.

Dr. Ehret's undated California state form report identified the accepted March 29, 2015 employment incident, diagnosed appellant as having a sprain and strain of an unspecified site, and found that she was unable to perform her usual work through May 1, 2015. She indicated with an affirmative mark that her examination findings and diagnoses were consistent with appellant's account of the accepted employment incident. The Board has held that an opinion consisting of a physician's affirmative checkmark is of diminished probative value without any explanation or rationale for the conclusion reached.¹³ Dr. Ehret did not explain how the accepted employment incident caused or contributed to appellant's diagnosed condition and resultant total disability. Her remaining report dated April 20, 2015 addressed appellant's total disability for work through May 13, 2015, but did not diagnose a medical condition or provide a medical opinion supporting that the accepted employment incident caused or contributed to appellant's total disability. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.¹⁴

Dr. Greene's narrative reports and California state form report dated March 30, 2015 identified the accepted March 29, 2015 employment incident, diagnosed left elbow, left knee, and left ankle strains, and found that she could perform her regular work with no restrictions. However, he failed to provide an opinion supporting that the diagnosed conditions were caused or aggravated by the accepted employment incident.¹⁵

The April 1, 2015 report from Ms. Naing, a nurse practitioner, which noted that appellant's disability for work from March 31 to April 21, 2015 was due to a March 29, 2015 work-related injury, has no probative medical value as a nurse practitioner is not considered a physician under FECA.¹⁶

¹¹ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

¹² *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

¹³ *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹⁴ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

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); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA).

As such, the Board finds that there is insufficient medical evidence to establish that appellant sustained left knee, left foot, and left elbow injuries causally related to the accepted March 29, 2015 employment incident.

On appeal, appellant contends that her claim was incorrectly denied based on the employing establishment's description of the incident that caused her claimed employment-related injuries which differed from her description of injury provided in her Form CA-1. The Board notes, however, that OWCP did not deny her claim because the factual component of fact of injury was not established by the evidence of record. Rather, as discussed above, appellant's claim was denied because she failed to submit sufficient medical evidence to establish that her diagnosed left knee, left foot, and left elbow conditions were causally related to the accepted March 29, 2015 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 failed to meet her burden of proof to establish left knee, left foot, and left elbow injuries on March 29, 2015 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board