United States Department of Labor
Employees' Compensation Appeals Board

D.P., Appellant	)	
	)	**Docket No. 17-1025**
and	)	**Issued: August 18, 2017**
	)	
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Chamblee, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On April 10, 2017 appellant filed a timely appeal from a November 14, 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a right foot condition causally related to the September 20, 2016 employment incident.

On appeal, appellant contends that, contrary to OWCP's denial of her claim, because her physician assistant's medical report was not countersigned by a physician, the report was countersigned by Dr. Augustine Conduah, an attending Board-certified orthopedic surgeon. She

[1] 5 U.S.C. § 8101 *et seq.*

also contends that, while OWCP's decision found that pain was not a valid diagnosis, she had submitted a report which indicated that she had a right medial ankle sprain.

FACTUAL HISTORY

On September 27, 2016 appellant, then a 64-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on September 20, 2016 she sustained a right foot injury in a parking deck before her tour of duty. She claimed that she was coming down the steps from the second floor of the garage when her foot rolled as she placed it on the bottom step. Appellant stopped work on the date of injury. On the reverse side of the form, the employing establishment noted that the alleged incident occurred in the parking deck before appellant's tour of duty. It controverted the claim, contending that she had not submitted any medical documents to establish a causal relationship between her injury and work environment or any evidence to establish that her injury was sustained in the performance of duty. The employing establishment also contended that appellant did not lose any time from work, and controverted continuation of pay because she had failed to submit any medical evidence to support her disability from work from September 20 to 30, 2016.

OWCP received a description of appellant's contact representative position.

By letter dated October 13, 2016, OWCP advised appellant of the deficiencies of her claim. It requested that she submit additional factual and medical evidence, including a detailed report from her physician explaining how the reported work incident caused or aggravated her claimed medical condition. In a separate October 13, 2016 letter, OWCP requested that the employing establishment respond to several questions regarding such matters as the location of appellant's claimed injury relative to the ownership of the parking lot facilities, whether the public was permitted to use the parking lot, whether appellant was required to use the parking lot, and whether parking spaces were assigned.

OWCP received an unsigned patient clinical summary report dated September 20, 2016 from Southeast Urgent Care. The report noted appellant's chief complaint of right foot pain, discussed examination findings, and provided a diagnosis of sprain of an unspecified ligament of the right ankle.

A September 30, 2016 medical report, signed by Elizabeth A. Berlin, a physician assistant, and cosigned by Dr. Conduah, noted that appellant presented for right ankle pain. The report also noted a history of injury that on September 20, 2016 appellant twisted her ankle while walking on steps out of a parking garage. She was examined and assessed as having acute right ankle pain and medial right ankle sprain.

On November 1, 2016 the employing establishment responded to OWCP's development letter. It noted that it owned, controlled, and managed the parking facilities. The employing establishment indicated that the public was not permitted to use the lot. The parking lot was only for employees who had a parking decal. It related that appellant could have parked in either the parking lot or third floor parking deck on its campus. The employing establishment advised that only employees with handicap decals, department managers, the director, certain managers, and union officials had assigned parking spaces. The remaining spaces in the parking lot and parking

deck were open to all employees. The employing establishment maintained that it paid for parking.

In a separate letter dated November 1, 2016, appellant responded to OWCP's development questionnaire. She indicated that while reporting to work she descended steps from the parking garage and her foot rolled over on the last step. After an hour or two her foot started throbbing and swelling. Appellant sought treatment from a nurse at work. By the end of the day, her ankle had swollen so badly that she could not put any weight on it. Appellant left work and went to Southeast Urgent Care where her foot was x-rayed and she was given crutches, an ankle brace, and a prescription for pain medication. She was advised that her ankle would heal in six weeks and that she should follow-up with her physician in a few days. Appellant noted that later that day, she telephoned the employing establishment to ask about filing a workers' compensation claim. She started the process and received a call that same day from a security officer at the employing establishment who planned to submit an accident report regarding her claimed injury. Appellant was referred to Dr. Conduah who released her to return to work on October 17, 2016. She maintained that the medical reports submitted clearly state that she had an ankle sprain caused by stress.

In a September 30, 2016 work/school status note, Dr. Conduah indicated that appellant was unable to work through October 16, 2016. He advised that she could return to regular work/activity on October 17, 2016.

By decision dated November 14, 2017, OWCP found that the claim was timely and that the evidence supported that the injury occurred as described, but denied appellant's traumatic injury claim because the medical evidence of record did not contain a medical diagnosis in connection with the accepted September 20, 2016 employment incident. It noted that a finding of pain alone was not a diagnosis, but rather a symptom. OWCP also noted that a physician assistant was not considered a qualified physician as defined under FECA unless his or her report was countersigned by a physician.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence[2] 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.[3]

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.[4] There are two components involved in establishing the fact of injury. First, the employee must

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

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

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

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[5]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[6] 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 identified factors.[7] The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury caused or aggravated by the accepted September 20, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish a right foot condition causally related to the accepted employment incident.

Dr. Conduah's September 30, 2016 work/school status note found that appellant was unable to work through October 16, 2016 and that she could return to regular work/activity on October 17, 2016. This evidence failed to provide a history of injury,[9] examination findings, a firm diagnosis of a particular medical condition,[10] or a specific opinion as to whether the accepted September 20, 2016 employment incident caused or aggravated appellant's condition and resultant disability.[11] The Board finds, therefore, that Dr. Conduah's note is of limited probative value.[12]

Similarly, the September 30, 2016 report signed by Ms. Berlin and cosigned by Dr. Conduah is insufficient to establish appellant's claim as it did not offer a medical opinion addressing whether appellant's diagnosed right ankle pain and medial right ankle sprain were

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

[6] *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).

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

[8] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

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

[10] *See Deborah L. Beatty,* 54 ECAB 340 (2003) (where the Board found that in the absence of a medical report providing a diagnosed condition and a reasoned opinion on causal relationship with the employment incident, appellant did not meet her burden of proof).

[11] *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *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).

[12] *D.M.*, Docket No. 16-1885 (issued February 15, 2017).

caused or aggravated by the accepted September 20, 2016 employment incident.[13] Thus, this evidence is insufficient to meet appellant's burden of proof.

The unsigned September 20, 2016 report from Southeast Urgent Care is insufficient to establish appellant's claim. A report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence.[14]

Appellant's belief that, factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.[15] The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right foot condition was caused or aggravated by the September 20, 2016 employment incident. Appellant, therefore, did not meet her burden of proof.

On appeal, appellant contends that OWCP's denial of her claim because her physician assistant's medical report was not countersigned by a physician was erroneous as the physician assistant's report was countersigned by Dr. Conduah. She also contends on appeal that while OWCP's decision found that pain was not a valid diagnosis, she had submitted a report which indicated that she had a right medial ankle sprain. While Ms. Berlin's report was cosigned by Dr. Conduah and the report provided a diagnosis of right medial ankle sprain, this evidence is of limited probative because, as noted above, it did not provide a medical opinion addressing whether there was a causal relationship between appellant's right ankle condition and the September 20, 2016 employment incident.[16]

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 a right foot condition causally related to the September 20, 2016 employment incident.

[13] *See supra* note 11.

[14] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

[15] 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

[16] *See supra* note 11.

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2017
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