

FACTUAL HISTORY

On July 25, 2016 appellant, then a 36-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left leg injury when her leg fell through a weak porch while in the performance of duty. She notified her supervisor and stopped work on the date of injury.

In work status reports dated July 25 through August 22, 2016, Dr. Priya P. Asija, Board-certified in family medicine, reported that appellant was first evaluated on July 25, 2016 for a left leg injury when she stepped into broken wooden porch flooring. She diagnosed left leg injury and swelling and restricted appellant from returning to work. Dr. Asija released appellant to work on August 23, 2016 with restrictions.

In an August 1, 2016 work status report, Dr. Myron O. Bodnar, Board-certified in internal medicine, reported that appellant was injured on July 25, 2016 and could return to work on August 4, 2016 with restrictions. He noted that she sustained a left leg injury when she stepped through a wood porch floor while delivering mail.

By letter dated September 15, 2016, OWCP informed appellant that the evidence of record was insufficient to support her claim. It noted that the medical evidence received failed to document any diagnosed condition which could be related to the employment incident. Appellant was advised of the medical evidence needed and was afforded 30 days to submit the necessary evidence.

In support of her claim, appellant submitted an August 12, 2016 certificate of excuse note and a September 7, 2016 disability release form from Dr. Corinne Kennedy, a treating chiropractor. Dr. Kennedy noted treatment for leg pain.

By decision dated October 27, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that she sustained an injury. It found that the July 25, 2016 incident occurred as alleged; however, the evidence failed to provide a firm medical diagnosis which could be attributed to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish 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, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed are causally related to the

³ *Supra* note 1.

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such causal relationship.⁷ The opinion of the physician must be based on 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

Appellant has established that the July 25, 2016 employment incident of her leg falling through a weak porch occurred as alleged. The issue, therefore, is whether the medical evidence of record is sufficient to establish that the employment incident caused an injury. The Board finds that appellant did not submit sufficient medical evidence to support that she sustained an injury causally related to the accepted employment incident.⁹ The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

In work status reports dated July 25 through August 22, 2016, Dr. Asija described the July 25, 2016 employment incident and diagnosed left leg injury and swelling. The Board notes that Dr. Asija failed to provide a firm medical diagnosis as the physician only noted left leg injury and swelling. As such her report is of limited probative medical value.¹⁰ Left leg swelling

⁴ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Id.*

¹⁰ *See B.S.*, Docket No. 11-1504 (issued February 3, 2012).

is a description of a symptom rather than a compensable medical diagnosis.¹¹ Dr. Asija also failed to address causal relationship. Similarly, Dr. Bodnar's August 1, 2016 work status report also failed to establish a firm medical diagnosis and did not address causation.¹² The opinion of a physician must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.¹³ Therefore, this evidence fails to meet appellant's burden of proof.

Dr. Kennedy is a chiropractor. Chiropractors are not considered physicians under FECA unless it is established that there is a spinal subluxation as demonstrated by x-ray to exist.¹⁴ Dr. Kennedy did not diagnose subluxation based on the results of an x-ray.¹⁵ Therefore, her report has no probative value.¹⁶

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹⁷ An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁸ In the instant case, appellant has established that the July 25, 2016 incident occurred as alleged. She has failed, however, to establish a firm medical diagnosis and to provide medical rationale supporting an injury causally related to the accepted July 25, 2016 employment incident. Thus, appellant has failed to meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹¹ *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

¹² Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

¹³ *See Lee R. Haywood*, 48 ECAB 145 (1996).

¹⁴ *See Kathryn Haggerty*, 45 ECAB 383 (1994).

¹⁵ 5 U.S.C. § 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁶ *L.S.*, Docket No. 07-560 (issued June 22, 2007).

¹⁷ *Daniel O. Vasquez*, 57 ECAB 559 (2006).

¹⁸ *D.D.*, 57 ECAB 734 (2006).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury causally related to a July 25, 2016 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 27, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2017
Washington, DC

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

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

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