

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

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C.S., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Bronx, NY, Employer** )

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**Docket No. 17-0399  
Issued: June 19, 2017**

*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 December 13, 2016 appellant filed a timely appeal from a November 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted August 18, 2016 employment incident.

On appeal, appellant alleges that incorrect information regarding her case was provided to OWCP. She reiterated the details of the employment incident, explained the delay in filing her claim, contended that she was injured in the performance of her duties, and argued that the medical evidence supported her claim.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On September 14, 2016 appellant, then a 62-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2016 she slipped on a waxed floor and twisted her right ankle, right knee, and right hip. The claim form did not indicate whether she stopped work.

By letter dated September 29, 2016, the employing establishment controverted appellant's claim as fact of injury had not been established. It contended that she had not provided rationalized medical evidence establishing an injury.

By letter dated October 5, 2016, OWCP informed appellant that further information was necessary to support her claim, and afforded her 30 days to submit this evidence.

In a September 12, 2016 report, Dr. Sivaram Rajan, a Board-certified orthopedic surgeon, noted that appellant reported a history of injuring her right knee and ankle on August 18, 2016 when, while working as a nurse, she slipped on a waxed floor and twisted her ankle. He noted that since then she had persistent right lateral-sided ankle discomfort as well as locking, catching and persistent medial-sided right knee pain. Dr. Rajan diagnosed right lateral malleolus avulsion fracture and probable right knee medial meniscal tear. He recommended a magnetic resonance imaging (MRI) scan to evaluate the right knee. Dr. Rajan noted that physical therapy was also recommended. He placed appellant's right knee in an air cast to control her symptoms. In a note dated September 15, 2016, Dr. Rajan indicated that appellant was under his care for a right knee injury. He noted that appellant could not return to work until she was reevaluated after her MRI scan was completed. In a September 21, 2016 report, Dr. Rajan noted that he had reviewed the MRI scan and it was essentially normal. He diagnosed right knee strain and right lateral malleolus ankle avulsion fracture.

In an October 12, 2016 letter, appellant stated that on August 18, 2016, while walking the corridor on the sixth floor on her way to collect the mail for her program, she slipped and tripped on a waxed floor. She alleged that she twisted her right ankle outward and hit her right hip hard. Appellant also noted that she slipped again while going to the operating room to assist a resident complete a form. She noted that on the same date she reported the incident to the practitioner in occupational health, who gave her an icepack. Appellant noted that at approximately 2:30 p.m. her lower right leg became very painful, and she notified her supervisor of the injury by e-mail. She noted that she continued to take Motrin and applied ice packs for the swelling at home and at work. Appellant alleged that she did not seek treatment right away because she did not think the injury was serious. In an October 20, 2016 statement, she stated that the correct date of her injury was August 18, 2016.

In an attending physician's report (Form CA-20) dated October 31, 2016, Dr. Rajan noted that September 12, 2016 x-rays of right ankle showed an avulsion fracture of the lateral malleolus. He checked a box marked "yes" indicating that he believed that this was caused by the injury of August 18, 2016 when appellant slipped and twisted her ankle and knee while walking down the corridor at her work. Dr. Rajan indicated that appellant was totally disabled from September 16 through 21, 2016. In a report of the same date, he diagnosed right knee strain, and right lateral malleolus ankle avulsion fracture.

In a letter dated November 2, 2016, Dr. Rajan stated that appellant injured her right knee and ankle when she fell at work on August 18, 2016. He noted that appellant's injuries included a right lateral malleolar avulsion fracture and that she also sustained a right knee strain and contusion. Dr. Rajan noted that the findings were confirmed with x-rays of the right ankle and right knee. He noted that appellant was advised to pursue physical therapy for both her knee and ankle, but that she had not received approval from workers' compensation.

By decision dated November 17, 2016, OWCP accepted that appellant's fall occurred as alleged, but denied appellant's claim as she had not established that her diagnosed medical conditions were causally related to the accepted employment incident of August 18, 2016.<sup>2</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish that 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 timely filed within the applicable time limitation period of FECA, that an injury was caused 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.<sup>3</sup> 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.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. 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.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>7</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the

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<sup>2</sup> The Board notes that although OWCP refers to an August 25, 2016 employment incident in its November 17, 2016 decision, the Board notes that appellant clarified that August 18, 2016 was the correct date. Additionally, the case record refers to August 18, 2016 as the date of the alleged employment injury.

<sup>3</sup> *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

### ANALYSIS

OWCP accepted that the employment incident occurred as alleged and that appellant established a medical diagnosis. However, it denied her claim as the medical evidence of record failed to establish that the medical diagnosis was causally related to the accepted August 18, 2016 employment incident.

In support of her claim, appellant submitted multiple reports by Dr. Rajan, her treating orthopedic surgeon. Dr. Rajan summarized his treatment in a letter dated November 2, 2016, wherein he stated that appellant injured her right knee and ankle when she fell at work on August 18, 2016, that appellant's injuries included a right lateral malleolar avulsion fracture, and that she also sustained a right knee strain and contusion. He noted that these findings were confirmed with x-rays of the right ankle and right knee. Dr. Rajan also indicated that appellant's injuries were caused by her employment accident. However, he failed to provide a rationalized medical opinion explaining the relationship. A mere conclusion without the necessary rationale explaining how and why the physician believes that appellant's accepted injury resulted in a diagnosed condition is not sufficient to meet appellant's burden of proof.<sup>9</sup> Dr. Rajan did not explain how or why appellant's accepted fall caused or contributed to her right knee or ankle conditions.<sup>10</sup> He merely attributes appellant's conditions to the accepted employment incident without any medical rationale.

Causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>11</sup> An award of compensation may not be based on surmise, conjecture, speculation, or appellant's belief of causal relationship.<sup>12</sup> Appellant has failed to submit rationalized medical evidence to meet her burden of proof on causal relationship.

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 failed to meet her burden of proof to establish an injury causally related to the accepted August 18, 2016 employment incident.

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *Id.*

<sup>10</sup> *D.N.*, Docket No. 15-1737 (issued November 25, 2015).

<sup>11</sup> *W.W.*, Docket No. 09-1619 (issued June 2010); *David Apgar*, 57 ECAB 137 (2005).

<sup>12</sup> *John D. Jackson*, 55 ECAB 465 (2004); *William Nimitz*, 30 ECAB 57 (1979).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 17, 2016 is affirmed.<sup>13</sup>

Issued: June 19, 2017  
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

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<sup>13</sup> By decision dated May 8, 2017, OWCP's Branch of Hearings and Review denied appellant's April 19, 2017 request for an oral hearing as untimely filed, and added that the issue could be resolved through a reconsideration request. The Board concludes, however, that the May 8, 2017 decision is null and void as the Board assumed jurisdiction on December 13, 2016 and the hearing request involved the same issue pending appeal before the Board. *See* 20 C.F.R. § 501.2(c)(3), which provides in pertinent part: "The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal." *See also Douglas E. Billings*, 41 ECAB 880 (1990).