United States Department of Labor
Employees' Compensation Appeals Board

R.M., Appellant	)	
and	)	**Docket No. 16-1845**
	)	**Issued: March 6, 2017**
DEPARTMENT OF VETERANS AFFAIRS, CENTRAL TEXAS VETERANS HEALTH CARE SYSTEM, Temple, TX, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 26, 2016 appellant filed a timely appeal of a March 28, 2016 merit decision of the Office of Workers' Compensation Programs[1] (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

[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 March 28, 2016, the date of OWCP's last decision was September 24, 2016, which is a Saturday. Pursuant to 20 C.F.R. 501.3(f)(2), when the last day of the period so computed is a Saturday, Sunday, or Federal holiday, the period runs to the close of the next business day, which would be Monday September 26, 2016. Since using September 29, 2016, 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 September 26, 2016, rendering the appeal timely filed. *See* 20 C.F.R. 501.3(f)(1).

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met her burden of proof to establish a right foot injury causally related to a December 4, 2015 employment incident.

FACTUAL HISTORY

On February 17, 2016 appellant, then a 62-year-old vocational rehabilitation specialist, filed a traumatic injury claim (Form CA-1), alleging that on December 4, 2015, while descending a cracked and damaged stairway, she fell and injured her right foot. She stopped work on December 4, 2015 and returned on December 8, 2015.

By letter dated February 26, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. It noted that medical evidence must be submitted by a qualified physician and that a physician assistant is not considered a qualified physician under FECA.

Appellant submitted an undated narrative statement and indicated that on December 4, 2015 she became ill with an intestinal condition. She reported that she left her office and descended the stairs in the domiciliary and fell on her right foot. Appellant reported her son accompanied her to a clinic where she had right foot x-rays and was prescribed a boot and medication. In response to an OWCP questionnaire she indicated that there were no witnesses to her fall. Appellant noted not sustaining any other injury and she did not have any similar symptoms or disability prior to this incident.

Appellant was treated by a physician assistant on December 4, 2015 for dysuria and right foot pain. She reported experiencing ankle pain after falling the day before. The physician assistant noted findings of edema of the right lower extremity and pain on palpation. Diagnoses included sprain/strain and right ankle pain. He prescribed a walking boot.

Appellant was treated by Dr. James B. Thompson, a Board-certified family practitioner, on December 8, 2015, who treated her for right ankle pain. She reported persistent right ankle pain after twisting her ankle the previous week. Dr. Thompson noted findings of restricted range of motion of the ankle. Diagnoses included foot contusion. Appellant submitted a December 8, 2015 patient referral form from Dr. Thompson requesting radiological examination of the ankle due to a contusion.

Appellant submitted a certificate to return to work dated February 17, 2016 and signed by a health care provider whose signature was illegible. It noted her treatment on December 4, 2015 and that he returned her to regular duty on December 8, 2015.

In an accident identification form dated December 4, 2015, appellant reported tripping and sustain a sprain/strain of her right foot. The incident description provided that on December 4, 2015 she was descending a stairwell in building 202 and slipped and fell. Appellant reported losing six days from work due to a kidney infection and injured foot.

In a March 28, 2016 decision, OWCP denied appellant's claim for compensation because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 is 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.[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. 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, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[4]

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.[5]

ANALYSIS

It is undisputed that on December 4, 2015 appellant descended the stairs in the domiciliary and fell. The evidence supports that she was diagnosed with a contusion of the right ankle. However, appellant has failed to submit sufficient medical evidence to establish that her diagnosed medical condition is causally related to the December 4, 2015 employment incident.

Appellant submitted a December 8, 2015 report from Dr. Thompson, who diagnosed a foot contusion. She reported twisting her ankle the prior week. Dr. Thompson noted findings of restricted range of motion of the ankle. A December 8, 2015 appellant referral form requested x-rays of the ankle due to a contusion. However, Dr. Thompson merely repeated the history of injury as reported by appellant without providing his own opinion regarding whether her condition was work related. To the extent that he is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between appellant's right ankle

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

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

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

or foot condition and the accepted work incident.[6] Therefore, this report is insufficient to meet her burden of proof.

Appellant submitted a December 4, 2015 report from a physician assistant. The Board has held that document notes signed by a physician assistant lack probative value as medical evidence as physician assistants are not considered physicians under FECA.[7]

Also submitted was a certificate to return to work dated February 17, 2016 signed by a health provider whose signature was illegible. Because this person's signature is illegible, there is no indication of who signed this report. The Board has held that medical reports lacking proper identification do not constitute probative medical evidence.[8]

Consequently, the Board finds that appellant has failed to submit sufficient medical evidence to establish that her accepted work incident on December 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 her burden of proof to establish that her right foot injury was causally related to the accepted December 4, 2015 employment incident.

[6] *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).

[7] *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).

[8] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2017
Washington, DC

Christopher J. Godfrey, 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