United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 17-0324**
	)	**Issued: March 24, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Sandy, UT, 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 November 29, 2016 appellant filed a timely appeal of an October 27, 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 to consider the merits of the case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury on September 10, 2016 occurring in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence with the filing of her appeal to the Board. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On September 14, 2016 appellant, then a 55-year-old distribution associate, filed a traumatic injury claim (Form CA-1) alleging on Saturday, September 10, 2016, she injured her right foot while performing her work duties. She reported that while she was moving a pallet around with a floor jack, she felt her right foot pop and it began hurting. Appellant took a break and then finished her shift. Her right foot continued to hurt on Sunday and she sought medical attention on Monday.

Appellant submitted a duty status report (Form CA-17) dated September 15, 2016 completed by Dr. Justin Banks, a podiatrist. Dr. Banks diagnosed tendinitis. In a separate form, also dated September 15, 2016, he indicated that appellant sustained a right foot and ankle injury while moving equipment at work. Dr. Banks reported severe pain and right tibial tenderness with possible fracture. He indicated by checking a box marked "yes" on a form report that appellant's condition was caused or aggravated by employment activities.

OWCP requested additional information from appellant on September 22, 2016 and afforded her 30 days to respond. It asked that appellant complete a questionnaire and submit additional factual evidence.

OWCP received an authorization for examination (Form CA-16) signed by the employing establishment which noted that she was moving mail with a floor jack and heard and felt her right foot pop. The physician's section of the form was a duplicate of the September 15, 2016 form report by Dr. Banks. Appellant provided an October 1, 2016 Form CA-17 from Dr. Banks indicating injury to a medial ankle ligament and diagnosing tendinitis and ankle sprain.

In an undated narrative report, Dr. Banks noted that he first treated appellant on September 12, 2016 due to her ankle injury. He noted that on September 10, 2016 appellant was moving a pallet with a jack and heard a pop in her lower leg. Appellant had pain and sought treatment. Dr. Banks found severe tenderness along the post-tibial tendon and medial ankle. He reported that x-rays were negative for a fracture, but that appellant's lower ankle and foot were very swollen with ecchymosis. Dr. Banks diagnosed a suspected posterior tibial tendon partial tear or severe sprain. He found that appellant was temporarily totally disabled due to the inability to bear weight on her foot.

Appellant responded to OWCP's request for factual information and in her questionnaire responses noted that her injury occurred on Saturday, September 10, 2016, while she was moving a pallet to the carrier cases with a floor jack. She had received permission to sign-in early and leave early. Appellant placed the pallet on the floor jack, and began walking when she heard her foot pop under her heel. She took her last break before leaving work. Appellant experienced foot pain beginning Saturday night, and she elevated and iced it. Her foot was swollen on Sunday morning. Appellant used leave on Monday, September 12, 2016, and contacted her physician. She worked on September 13, 2016 while wearing a prescribed boot and reported her injury on September 14, 2016.

The employing establishment offered appellant a limited-duty position on October 4, 2016 which entailed sitting only with no standing.

By decision dated October 27, 2016, OWCP denied appellant's traumatic injury claim as she failed to provide sufficient factual evidence to establish that the employment incident occurred as alleged. It also noted that appellant failed to provide sufficient medical evidence to establish causal relationship.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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, 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 sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

OWCP defines a traumatic injury as, "[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected."[6] 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.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. However, an employee's statement alleging that an injury

[3] 5 U.S.C. §§ 8101-8193.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

[7] *Elaine Pendleton*, *supra* note 4.

occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[8]

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.[9] A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.[10] Medical rationale includes a physician's detailed opinion on the issue of whether these is a causal relationship between the claimant's diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, 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 specific employment activity or factors identified by the claimant.[11]

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish a traumatic injury on September 10, 2016 occurring in the performance of duty.

With regard to the first element of a fact of injury, appellant alleged that she sustained a right foot injury on September 10, 2016. She consistently reported on statements to OWCP and the employing establishment as well as to her physician that while she was moving a pallet around with a floor jack, she felt her right foot pop. Following this incident on Saturday, September 10, 2016, appellant experienced foot pain and sought medical treatment on September 12, 2016. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and her subsequent course of action. She notified the employing establishment of her injury on September 14, 2016, within four days of her injury, obtained medical treatment on September 12, 2016 within two days of the alleged injury, one of which was a Sunday, and attempted to return to work on September 13, 2016. The Board finds that the September 10, 2016 incident, moving a pallet with a floor jack, occurred as alleged.

While appellant has established that the September 10, 2016 incident occurred, she has not established a causal relationship between her work incident and the diagnosed conditions of tendinitis and ankle sprain. A Form CA-16 authorization for medical treatment was issued by the employing establishment on September 14, 2016.[12] Appellant submitted medical evidence from Dr. Banks who described appellant's history of injury as while moving a pallet with a jack

[8] *D.B.*, 58 ECAB 464, 466-67 (2007).

[9] *J.Z.*, 58 ECAB 529 (2007).

[10] *T.F.*, 58 ECAB 128 (2006).

[11] *A.D.*, 58 ECAB 149 (2006).

[12] When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

and hearing a pop sound in her right lower extremity. Dr. Banks provided findings including swelling and x-rays which did not indicate a fracture. He noted, "I suspected a posterior tibial tendon partial tear or severe sprain." Dr. Banks also diagnosed tendinitis and ankle sprain on his Form CA-17s. He indicated with a checkmark "yes" on a form report that appellant's condition was caused by her employment activity, but offered no explanation or reasoning in support of this opinion. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[13] A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident or work factors were sufficient to result in the diagnosed medical condition is insufficient to meet a claimant's burden of proof to establish a claim.[14] Dr. Banks has not offered sufficient explanation to address how moving pallets with a floor jack on September 10, 2016 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 failed to meet her burden of proof to establish a traumatic injury on September 10, 2016 occurring in the performance of duty.

[13] *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

[14] *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

ORDER

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

Issued: March 24, 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