

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

M.M., Appellant

and

SOCIAL SECURITY ADMINISTRATION,
REGION IV, Paducah, KY, Employer

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**Docket No. 17-1071
Issued: November 1, 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 April 17, 2017 appellant filed a timely appeal from a December 2, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury due to a February 9, 2015 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² Together with her appeal request, appellant submitted a timely request for oral argument pursuant to 20 C.F.R. § 501.5(b). After exercising its discretion, by order dated September 21, 2017, the Board denied the request as appellant's arguments on appeal could be adequately addressed in a decision based on a review of the case as submitted on the record. *Order Denying Request for Oral Argument*, Docket No. 17-1071 (issued September 21, 2017).

FACTUAL HISTORY

On August 19, 2015 appellant, then a 51-year-old service representative, filed a traumatic injury claim (Form CA-1) alleging that on February 9, 2015 she sustained injury to her ankles, left hand, and left wrist due to a fall at work. She indicated that she turned both her ankles when she slipped and fell on a wet breakroom floor and fell into some chairs. Appellant advised that she put her left arm out in an attempt to stop her fall, but her left palm hit the sharp edge of a table and her ankles rolled out from under her. She stopped work on April 16, 2015 and requested continuation of pay.

On the same form, appellant's current immediate supervisor indicated that appellant was not on a break at the time of the February 9, 2015 fall and had no reason to be in the breakroom. The supervisor indicated that the employing establishment was controverting appellant's claim for continuation of pay.³

In an August 19, 2015 letter, counsel, at the time, asserted that appellant was in the performance of duty at the time of her February 9, 2015 fall and that the fall caused injury to her ankles, left hand, and left wrist.

In a September 8, 2015 letter, OWCP requested that appellant submit additional evidence in support of her claim. It asked her to complete and return a development questionnaire which posed various questions regarding the circumstances of her claimed February 9, 2015 employment injury. OWCP also requested that appellant submit a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition.

In an October 2, 2015 statement, appellant indicated that she was on the clock at the time of her February 9, 2015 fall and had gone to the breakroom to make coffee for the office, an act which did not require being on official break time. She provided a description of her February 9, 2015 fall which was similar to that provided in her Form CA-1 and noted that she reported the fall to her immediate supervisor on the date it occurred.

Appellant submitted numerous medical reports which were produced prior to the February 9, 2015 fall. In a December 17, 2012 report, Dr. Stephen H. Jackson, an attending Board-certified orthopedic surgeon, reported performing a right carpal tunnel release on that date. On January 3, 2013 he performed a left carpal tunnel release.⁴ In reports dated in 2012 and

³ In a February 9, 2015 unsigned statement, an unidentified person indicated that at approximately 8:45 a.m. on February 9, 2015 he/she received a telephone call that appellant had fallen in the breakroom. The individual noted that he/she went to the breakroom and saw appellant standing with her hands on the kitchen counter. Appellant advised that she hurt her left ankle due to the fall.

⁴ Under a separate claim (OWCP File No. xxxxxx000), appellant filed a claim in connection with her bilateral carpal tunnel syndrome condition. The Board notes that her bilateral carpal tunnel syndrome condition is not the subject of the present appeal. Appellant also submitted an October 10, 2013 report indicating that Dr. Jackson performed a release of the A1 pulley of her right thumb on that date to address a right trigger thumb condition. This condition also is not the subject of the present appeal.

2013, appellant's attending physicians discussed these medical problems, as well as her complaints of neck and right shoulder pain.

Appellant also submitted medical reports that were produced after her February 9, 2015 fall that were related to her claimed injury. In an April 17, 2015 report, Dr. Jackson discussed his performance on that date of an excisional arthroplasty of the trapezium of her left thumb with interpositional soft tissue graft. The surgery was not approved by OWCP. On April 27, 2015 Dr. Jackson indicated that he removed some sutures remaining from appellant's April 17, 2015 left hand surgery.

In a September 14, 2015 report, Dr. Jackson indicated that appellant's chief complaint was discomfort about her right ankle and noted that she reported suffering an inversion injury to her right ankle on an unspecified date and having problems with swelling. He diagnosed well-functioning left hand postexcisional arthroplasty of the trapezium, and inflammation of the right ankle joint.

In an October 13, 2015 decision, OWCP denied appellant's claim for a work-related February 9, 2015 injury. It accepted the occurrence of an employment incident on February 9, 2015 in the form of a fall at work. However, OWCP found that appellant failed to submit sufficient medical evidence to establish a diagnosed condition due to the accepted February 9, 2015 employment incident.

In an August 25, 2016 letter received on that date, counsel at the time requested reconsideration of OWCP's October 13, 2015 decision. She argued that an enclosed May 23, 2016 report of Dr. Jackson established appellant's claim for a February 9, 2015 employment injury.

In his May 23, 2016 report, Dr. Jackson indicated that he had been treating appellant for her hands. He noted that she had done well after bilateral carpal tunnel release surgery when she slipped on a wet floor and struck her left hand on furniture. Dr. Jackson indicated that, following that injury, appellant had increased pain about the carpometacarpal joint of her left thumb and noted that "this resulted in an excisional arthroplasty of the trapezium of [appellant'] left thumb." He advised that she did well with the left thumb surgery and had been released to activity as tolerated. Dr. Jackson noted, "I feel that the fall definitely exacerbated preexisting arthritis of the carpometacarpal joint of the left thumb, necessitating that surgery and [appellant's] subsequent time off."⁵

In a December 2, 2016 decision, OWCP denied modification of its October 13, 2015 decision. It accepted the occurrence of an employment incident on February 9, 2015 as alleged,

⁵ In a November 13, 2015 report, Dr. Thomas T. Dovan, an attending Board-certified orthopedic surgeon, indicated that appellant presented to his office with a new problem. Appellant reported that she fell on November 13, 2015 and landed on her right arm such that she hyperextended her right shoulder. Dr. Dovan noted that his examination showed mild swelling and limited motion of the right shoulder and he diagnosed right shoulder pain. On December 28, 2015 he indicated that appellant was seen for follow-up of her right shoulder contusion/sprain. The Board notes that there is no indication in the record that her November 16, 2015 fall occurred at work or that she filed a claim with OWCP in connection with the fall.

but found that appellant failed to submit sufficient medical evidence to establish a diagnosed condition due to the accepted February 9, 2015 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁶ 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 that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁷

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.¹⁰

The fact that a condition manifests itself during a period of employment is not sufficient to establish causal relationship.¹¹ Temporal relationship alone will not suffice.¹² Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.¹³

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation,

⁶ See *supra* note 2.

⁷ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

¹⁰ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹¹ 20 C.F.R. § 10.115(e).

¹² See *D.I.*, 59 ECAB 158, 162 (2007).

¹³ See *M.H.*, Docket No. 16-0228 (issued June 8, 2016).

the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁴

ANALYSIS

Appellant claimed that on February 9, 2015 she sustained injury to her ankles, left hand, and left wrist due to a fall at work. She indicated that she turned both her ankles when she slipped and fell on a wet breakroom floor and fell into some chairs.¹⁵ In October 13, 2015 and December 2, 2016 decisions, OWCP denied appellant's claim for a work-related February 9, 2015 injury. It accepted the occurrence of an employment incident on February 9, 2015 in the form of a fall at work as alleged, but found that she failed to submit sufficient medical evidence to establish a diagnosed condition due to the accepted February 9, 2015 employment incident.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury due to a February 9, 2015 employment incident.

Appellant only submitted one medical report which addressed her claimed February 9, 2015 employment injury. In a May 23, 2016 report, Dr. Jackson, an attending physician, indicated that he had been treating her for her hands. He noted that appellant had done well after bilateral carpal tunnel release surgery when she slipped on a wet floor and struck her left hand on furniture. Dr. Jackson indicated that, following that injury, she had increased pain about the carpometacarpal joint of her left thumb and noted that "this resulted in an excisional arthroplasty of the trapezium of her left thumb." He noted, "I feel that the fall definitely exacerbated preexisting arthritis of the carpometacarpal joint of the left thumb, necessitating that surgery and [appellant's] subsequent time off."

The Board finds that Dr. Jackson's May 23, 2016 report is of limited probative value in establishing appellant's claim for a February 9, 2015 employment injury because he did not provide medical rationale in support of his opinion that the February 9, 2015 fall exacerbated her preexisting left thumb arthritis and necessitated the April 17, 2015 excisional arthroplasty of her left thumb trapezium. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.¹⁶ Dr. Jackson did not describe the February 9, 2015 fall in any detail or explain the medical process through which the fall could have aggravated appellant's preexisting left thumb condition. The Board notes that such medical rationale is especially necessary in the present case because there is no contemporaneous medical evidence in the record addressing her February 9, 2015 fall or its effects. Dr. Jackson did not explain how specific objective findings on physical examination and diagnostic testing supported his opinion on causal relationship.

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁵ Appellant advised that she put her left arm out in an attempt to stop her fall, but her left palm hit the sharp edge of a table and her ankles rolled out from under her.

¹⁶ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

The record contains medical evidence pertaining to the April 17, 2015 left thumb surgery and appellant's follow-up care, but none of these reports contains an opinion relating her left thumb condition to the February 9, 2015 employment incident. Appellant submitted other reports addressing her various medical problems, but these reports of are limited probative value on the relevant issue of this case because none of them contained a rationalized opinion relating a specific diagnosed condition to the accepted February 9, 2015 employment incident.¹⁷

On appeal appellant asserts that she can prove that she filed a timely claim for her alleged February 9, 2015 injury, and that she requested leave to seek medical care following her February 9, 2015 fall rather than before it. However, the Board notes that her filing of the present claim was found to be timely and her claim was denied on a medical basis rather than a factual basis. Appellant also asserts that she can prove that her February 9, 2015 fall worsened her bilateral carpal tunnel syndrome, but the Board has explained that the medical evidence was insufficient to establish that her February 9, 2015 fall caused a new injury or aggravated a preexisting injury.¹⁸

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 not met her burden of proof to establish that she sustained an injury due to a February 9, 2015 employment incident.

¹⁷ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017); *D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition).

¹⁸ Appellant also claims that management made false allegations and retaliatory statements about her claim, denied her reasonable accommodations for her targeted disabilities, and failed to adequately help her conduct an approved time analysis. However, she did not provide any further evidence about these vague allegations or explain how they are relevant to the main issue of this case which is essentially medical in nature, *i.e.*, whether she submitted sufficient medical evidence to establish a February 9, 2015 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 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