

FACTUAL HISTORY

On June 4, 2015 appellant, then a 22-year-old corrections officer, filed a traumatic injury claim (Form CA-1) alleging that on June 3, 2015, she sustained a sprained ankle as a result of twisting her ankle while descending stairs. She did not stop work. The claim form indicated no lost time, but that medical expenses were expected.

A report dated July 30, 2015, related that a nurse examined appellant and made findings of left ankle tendinitis and an Achilles tendon injury.

Appellant also submitted notes from a physical therapist dated between August 20 and September 3, 2015.

In a note dated July 20, 2015, Dr. Andrew R. Usery, a specialist in internal medicine, reviewed diagnostic imaging and diagnosed appellant with a left Achilles tendon injury and ankle tendinitis.

On February 9, 2017 appellant filed a notice of recurrence (Form CA-2a). She claimed that her ankle injury had never fully healed and that she had suffered no injuries since the original date of injury. Appellant noted that her claim for recurrence was for medical treatment only.

By letter dated February 22, 2017, OWCP informed appellant that her case had been reopened for consideration due to her filing of a claim for recurrence. It requested that she submit additional medical evidence in support of her claim, and afforded her 30 days to submit such evidence. OWCP advised appellant that reports from nurse practitioners and physical therapists did not qualify as reports from physicians under FECA, and thus would not qualify as evidence in support of her claim.

Appellant submitted additional physical therapy notes and resubmitted the July 20, 2015 note of Dr. Usery. She also submitted a narrative statement dated March 8, 2017, in which she noted that she did not have any chronic ankle pain before her injury and that pain from the original injury had not disappeared even after physical therapy.

In a report dated February 8, 2017, Dr. Jason Harrod, Board-certified in podiatry, assessed appellant with left ankle instability, status post inversion ankle injury in June 2015 with continued symptoms. Appellant indicated that she had slipped down some steps in June 2015 at work, and that she continued to have difficulty and symptoms consistent with instability.

By decision dated March 27, 2017, OWCP denied appellant's claim, finding that she had not established causal relationship between the June 3, 2015 accepted employment incident and her diagnosed left ankle conditions. It found that she had not submitted any medical reports containing a medical opinion explaining how her ankle conditions were causally related to the accepted June 30, 2015 employment incident.

By letter received April 17, 2017, appellant requested reconsideration of OWCP's March 27, 2017 decision. She did not submit any additional documents in support of her request for reconsideration.

By decision dated April 24, 2017, OWCP denied appellant's request for reconsideration. It found that because she had not submitted any new and relevant evidence nor raised substantive legal questions on reconsideration, she was not entitled to reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA² 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 timely filed within the applicable time limitation period of FECA, that an injury³ was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

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. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged. 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. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁵

The claimant has the burden of proof to establish by the weight of reliable, probative, and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁶ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

² *Id.*

³ OWCP's regulations define 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. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and compensable employment factors.⁹ 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.¹⁰

ANALYSIS -- ISSUE 1

Appellant alleged that on June 3, 2015, she sustained an injury to her left ankle when she twisted it while walking down stairs in the performance of duty. OWCP accepted that the incident occurred as alleged, but denied the claim as the evidence of record was insufficient to establish causal relationship. The Board finds that appellant has failed to submit sufficient evidence to establish causal relationship between the employment incident of June 3, 2015 and her diagnosed left ankle conditions.

In a note dated July 20, 2015, Dr. Usery reviewed diagnostic imaging and diagnosed appellant with a left Achilles tendon injury and ankle tendinitis. In a report dated February 8, 2017, Dr. Harrod assessed her with left ankle instability, status post inversion ankle injury in June 2015 with continued symptoms. Appellant noted to him that she had slipped down some steps in June 2015 at work and that she continued to have difficulty and symptoms consistent with instability.

Neither the reports of Dr. Usery nor Dr. Harrod provided a rationalized medical opinion explaining how the accepted employment incident caused the diagnosed ankle conditions. The mere recitation of patient history does not suffice for purposes of establishing a causal relationship between a diagnosed condition and the employment incident.¹¹ As such, these reports fail to support the causal relationship between appellant's diagnosed conditions and the accepted incident.¹²

The remainder of the reports submitted by appellant came from nurses or physical therapists. Nurses and physical therapists are not considered physicians under FECA and, therefore, their medical reports have no probative value unless such medical reports are

⁸ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149, 155-56 (2006); *D'Wayne Avila*, 57 ECAB 642, 649 (2006).

⁹ *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379, 384 (2006).

¹⁰ *I.J.*, 59 ECAB 408, 0415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *See R.T.*, Docket No. 10-2059 (issued June 21, 2011).

¹² *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (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).

countersigned by a physician.¹³ As the reports submitted were not countersigned by a physician, they have no probative value on appellant's claim for compensation.

As such, the Board finds that appellant failed to submit sufficient evidence to establish her claim for a traumatic injury causally related to the June 3, 2015 employment incident. Appellant did not submit a clear and rationalized opinion from a qualified physician relating her diagnoses to the incident of June 3, 2015. The medical evidence of record failed to offer any medical opinion addressing whether the diagnosed conditions were caused or aggravated by the accepted employment incident.

Appellant's belief that an employment incident caused or aggravated her condition is insufficient, by itself, to establish causal relationship.¹⁴ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician.¹⁵ The Board finds, therefore, that appellant has not met her burden of proof to establish her claim.¹⁶

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.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁷ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁸

¹³ A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as physician as defined in 5 U.S.C. § 8101(2). Section 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." Under FECA, the report of a nurse, *P.S.*, Docket No. 17-0598 (issued June 23, 2017) or a physical therapist, *S.T.*, Docket No. 17-0913 (issued June 23, 2017) does not constitute probative medical evidence as they are not considered physicians under FECA.

¹⁴ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

¹⁵ *See Y.G.*, Docket No. 17-1209 (issued August 25, 2017).

¹⁶ While appellant also filed a notice of recurrence of disability on February 9, 2017, a recurrence must be a spontaneous return of an accepted employment injury. *See M.C.*, Docket No. 11-0822 (issued January 25, 2012). As found above, OWCP did not accept an employment injury in this case.

¹⁷ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁸ *Id.* at § 10.608(b); *see K.H.*, 59 ECAB 495, 499 (2008).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

In her request for reconsideration, which OWCP received on April 12, 2017, appellant did not establish that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a new and relevant legal argument.

The underlying issue in this case was whether appellant sustained an ankle injury causally related to the accepted June 3, 2015 employment incident. That is a medical issue which must be addressed by relevant and pertinent medical evidence.¹⁹ Appellant submitted no further medical evidence to support her request for reconsideration.

The Board, therefore, finds that appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a legal argument not previously considered, or submitted evidence that constituted pertinent new and relevant evidence not previously considered. Thus, appellant is not entitled to a review of the merits of her claim based on the above-noted requirements under section 10.606(b)(3).

The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury causally related to the accepted June 3, 2015 employment incident. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹⁹ See *Bobbie F. Cowart*, 55 ECAB 746 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 24, 2017 and March 27, 2017 are affirmed.

Issued: October 18, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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