United States Department of Labor
Employees' Compensation Appeals Board

G.H., Appellant	)	
and	)	**Docket No. 17-1387**
	)	**Issued: October 24, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Cranston, RI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 7, 2017 appellant filed a timely appeal from an April 14, 2017 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 over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish a left ankle or back injury causally related to the accepted February 21, 2017 employment incident.

FACTUAL HISTORY

On February 23, 2017 appellant, then a 61-year-old retail window clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2017 she sprained her left ankle when she fell while turning to the left to place a package in a cart.

[1] 5 U.S.C. § 8101 *et seq.*

In an emergency department report dated February 21, 2017, Dr. Shihab Ali, an emergency medicine physician, diagnosed a likely ankle sprain, but no acute fracture. He noted that appellant reported pain after a fall while working at the employing establishment, which gradually worsened over the course of several hours.

In a diagnostic report dated February 21, 2017, Dr. Heather I. Gale, a Board-certified radiologist, examined the results of an x-ray of appellant's left ankle. She noted impressions of soft tissue swelling over the dorsal mid-foot along with irregularity of the anterior navicular bone. Dr. Gale noted that this irregularity may be related to prior post-traumatic, inflammatory, or degenerative arthropathy.

Appellant submitted several notes from nurses and physician assistants dated between February 21 and March 1, 2017.

In a duty status report dated February 28, 2017, Dr. P. Wilfredo Canchis, a specialist in internal medicine, diagnosed appellant with lower back sprain and left-sided sciatica due to her left ankle sprain. He recommended that she not return to work.

By letter dated February 28, 2017, the employing establishment controverted appellant's claim. It contended that her claim should be rejected because she had a preexisting condition, she was unable to accurately describe the injury, and there was no unsafe condition involved.[2]

By report dated March 7, 2017, Dr. Canchis diagnosed a low back sprain, sprain of the left ankle, and sciatica. He noted that she returned for a follow-up regarding her February 21, 2017 left ankle and back injuries. In a duty status report dated March 7, 2017, Dr. Canchis continued to recommend that appellant not return to work.

By letter dated March 13, 2017, OWCP informed appellant of the evidence needed to establish her claim. It advised her 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. OWCP noted that appellant had submitted insufficient evidence to establish either the factual or medical portions of her claim, and afforded her 30 days to submit additional evidence. It also requested that she respond to a claim development questionnaire.

In a report dated March 23, 2017, Dr. John K. Czerwein, a Board-certified orthopedic surgeon, diagnosed a left ankle sprain, lumbar strain/sprain, and exacerbated/aggravated lumbar spondylosis/stenosis. He noted that she described falling on February 1, 2017, injuring her left ankle, and aggravating underlying lumbar pain. Dr. Czerwein opined, "It is within a reasonable degree of medical certainty that [appellant's] left ankle pain as well as some back pain is related to the work incident that occurred on February 1, 2017, and I think her back has been exacerbated and/or aggravated."

[2] By letter dated March 3, 2017, a coworker described the claimed incident. She stated that, while she was helping a customer, she heard a noise and a customer asking appellant, "Are you all right?" The coworker turned to see that appellant had fallen. Appellant denied to the coworker that she had tripped. Asking appellant whether she was okay, appellant responded "yes" and "we'll see how it goes later."

On April 10, 2017 Dr. Canchis noted that appellant described working on February 21, 2017 at the employing establishment, when she tripped and fell, landing on her lower back and twisting her left ankle. He noted that her symptoms were improving. Dr. Canchis opined, "I believe within a reasonable degree of medical certainty that the incident described on February 21, 2017 was the cause of the symptoms presenting to this office on February 28 and March 8, 2017."

By decision dated April 14, 2017, OWCP denied appellant's claim for compensation. It found that she had not submitted a sufficiently well-rationalized medical report substantiating that her diagnosed conditions were caused or aggravated by the February 21, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 injury[4] 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.[5]

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.[6]

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.[7] 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

[3] *Supra* note 1.

[4] OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events of 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).

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

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

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

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[9] 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 a compensable employment incident.[10] 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.[11]

ANALYSIS

Appellant alleged that on February 21, 2017 she sustained injury as a result a fall while turning to the left to place a package in a cart. The Board finds that, while she has established that this incident occurred as alleged, appellant has not submitted sufficient rationalized medical evidence to establish that the incident caused or aggravated her diagnosed medical conditions.

In a report dated March 23, 2017, Dr. Czerwein diagnosed a left ankle sprain, lumbar strain/sprain, and exacerbated/aggravated lumbar spondylosis/stenosis. He noted that she described falling on February 1, 2017, injuring her left ankle and aggravating her underlying lumbar pain. Dr. Czerwein opined, "It is within a reasonable degree of medical certainty that [appellant's] left ankle pain as well as some back pain is related to the work incident that occurred on February 1, 2017, and I think her back has been exacerbated and/or aggravated."

On April 10, 2017 Dr. Canchis noted that appellant described working on February 21, 2017 at the employing establishment, when she tripped and fell, landing on her lower back and twisting her left ankle. He noted that her symptoms were improving. Dr. Canchis opined, "I believe within a reasonable degree of medical certainty that the incident described on February 21, 2017 was the cause of the symptoms presenting to this office on February 28 and March 8, 2017."

Dr. Czerwein's March 23, 2017 opinion on causation is highly speculative as he notes that appellant's employment duties "may have" aggravated her symptoms.[12] As such, his report is of diminished probative value on the issue of causal relationship.

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

[9] *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).

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

[11] *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[12] *See D.F.*, Docket No. 17-0135 (issued June 5, 2017).

Moreover, Dr. Canchis' April 10, 2017 report contains a correct history of injury and a conclusion that the employment incident was the cause of the symptoms appellant presented. Again, he did not provide a medical explanation of how the claimed work event caused or aggravated her claimed conditions. As such, Dr. Canchis' April 10, 2017 report is insufficient to establish causal relationship between the event of February 21, 2017 and appellant's claimed conditions.[13]

The remainder of the medical evidence does not contain any opinions from a physician as to the cause of appellant's claimed conditions. Dr. Ali diagnosed a likely ankle sprain, but offered no opinion regarding causal relationship. 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.[14] In a diagnostic report Dr. Gale interpreted the results of an x-ray of appellant's ankle. However, diagnostic reports which offer no opinion regarding causal relationship are of limited probative value.[15]

Appellant also submitted documents from nonphysicians. Nurse practitioners and physician assistants do not qualify as physicians under FECA and, therefore, their medical reports have no probative value.[16]

As such, the Board finds that appellant failed to submit sufficient evidence to establish her claim for a work-related left ankle or back injury causally related to the accepted February 21, 2017 employment incident. Appellant failed to submit a clear and rationalized opinion from a qualified physician relating her diagnoses to the accepted incident of February 21, 2017.[17]

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.

[13] *Id.*

[14] *Willie M. Miller*, 53 ECAB 697 (2002).

[15] *E.B.*, Docket No. 17-0305 (issued July 10, 2017).

[16] 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." *See Merton J. Sills*, 39 ECAB 572, 575 (1988). Healthcare providers such as licensed clinical social workers, nurses, acupuncturists, physician assistants, and physical therapists are not considered physicians under FECA and their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship. *See D.F.*, Docket No. 17-0135 (issued June 5, 2017).

[17] *Supra* note 11.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left ankle or back injury causally related to the accepted February 21, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the April 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2017
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board