

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

M.M., Appellant)	
)	
and)	Docket No. 17-1522
)	Issued: April 25, 2018
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Memphis, TN, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 3, 2017 appellant filed a timely appeal from a May 11, 2017 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 to consider the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a traumatic injury on September 4, 2016 in the performance of duty, as alleged.

FACTUAL HISTORY

On March 28, 2017 appellant, then a 57-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she sprained the right sole of her foot/heel in the automation

¹ 5 U.S.C. § 8101 *et seq.*

room of the employing establishment at 9:45 a.m. on September 4, 2016. She listed the cause of her injury as an “APC” (all-purpose container).

In a development letter dated April 3, 2017, OWCP requested that appellant provide additional factual and medical evidence describing how her injury occurred and any diagnosed condition that resulted from the alleged employment incident. It explained that medical evidence must be submitted by a qualified physician and that nurse practitioners and physician assistants were not considered qualified physicians under FECA. OWCP afforded appellant 30 days to respond.

On April 12, 2017 appellant signed OWCP’s development questionnaire without providing any responses to the inquiries. She also submitted a duty status report (Form CA-17) dated September 4, 2016 completed by a nurse practitioner. The nurse practitioner also signed appellant’s emergency department patient discharge summary dated September 4, 2016 for a minor foot injury with pain and swelling. Dr. Christopher Somogyi, a radiologist, reviewed x-rays on September 4, 2016 and reported no acute findings. Dr. Freddie L. Everson, a family practitioner, completed a note reporting that he examined appellant on September 9, 2016 and that he released her to return to work on September 9, 2016 with no restrictions.

Appellant’s supervisor responded on April 12, 2017 and indicated that appellant had informed the employing establishment of her claimed September 4, 2016 employment injury. He described the employment incident noting that, as appellant was moving a defective APC, it rolled and struck her foot and toe. The employing establishment sent appellant for medical treatment. Appellant’s supervisor noted that the employing establishment failed to formally file the accident report in a timely manner.

By decision dated May 11, 2017, OWCP denied appellant’s traumatic injury claim, finding that she had not submitted the necessary factual evidence to establish that the incident occurred in the performance of duty as alleged. It further noted that she had not provided any evidence diagnosing a medical condition.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³

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

² *Supra* note 1.

³ *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

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.”⁴ 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.⁵ 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 his or her burden of proof in 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 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.⁶

It is the claimant’s burden of proof to submit sufficient evidence necessary for OWCP to make a determination as to whether an employment incident occurred as alleged. The evidence must be sufficient to establish whether the claimant was in the course of federal employment at the time of the incident, so that a proper determination may be made as to whether an injury occurred while in the performance of duty.⁷

The second component is whether the employment incident caused a personal injury.⁸ 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.⁹

⁴ 20 C.F.R. § 10.5(ee).

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *D.B.*, 58 ECAB 464, 466-67 (2007).

⁷ *O.L.*, Docket No. 16-0840 (issued August 28, 2017).

⁸ *Supra* note 5; *M.P.*, Docket No. 17-1221 (issued August 21, 2017).

⁹ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *M.P.*, *id.*

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 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.¹²

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered “physician[s]” as defined under FECA.¹³ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁴

ANALYSIS

The Board finds that appellant has established that the employment incident occurred on September 4, 2016 in the performance of duty, as alleged. However, the Board further finds that appellant has not submitted the necessary medical evidence to establish a personal injury resulting from the September 4, 2016 employment incident.

Appellant completed a traumatic injury claim and alleged that she injured her right foot on September 4, 2016 with an APC at the employing establishment. Her supervisor substantiated that a defective APC rolled and struck appellant’s foot and toe and that appellant timely reported this incident. The Board finds that there is sufficiently detailed factual evidence in the record to establish that appellant sustained a traumatic incident on September 4, 2016 in the performance of duty. Appellant’s statement on her claim form that her right foot was injured on that date by an APC at 9:45 a.m. was corroborated by her supervisor and contains clear detail regarding the time, place, and in the manner alleged. The employing establishment also aided appellant in seeking medical treatment on September 4, 2016. As appellant and her supervisor provided consistent statements regarding the time and place, and manner of the employment incident, and as appellant sought medical treatment on that date, the record is sufficient to meet her burden of proof to establish that the incident occurred on September 4, 2016, as alleged.¹⁵

¹⁰ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *See Charles H. Tomaszewski*, 39 ECAB 461 (1988); *M.P.*, *supra* note 8.

¹⁴ *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *M.P.*, *supra* note 8.

¹⁵ *See D.C.*, Docket No. 17-0690 (issued July 19, 2017); *E.W.*, Docket No. 17-0069 (issued May 23, 2017).

Appellant, however, has failed to submit medical evidence sufficient to establish a personal injury resulting from the September 4, 2016 employment incident. She submitted an x-ray report from Dr. Somogyi dated September 4, 2016 which did not provide a diagnosis and only noted no acute findings. Appellant submitted a note from Dr. Everson dated September 9, 2016 indicating only that appellant could return to work on September 9, 2016 with no restrictions. Neither of these reports signed by a physician provide any diagnosis of a personal injury caused by or related to her September 4, 2016 employment incident.¹⁶

Appellant also provided documents signed by a nurse practitioner on September 4, 2016. The Board notes that these reports are of no probative value with respect to appellant's claim for a September 4, 2016 work injury because under FECA, the report of a nurse practitioner¹⁷ does not constitute probative medical evidence as they are not physicians under FECA.¹⁸

Thus, the Board finds that appellant has not met her burden of proof.

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 established that the employment incident occurred on September 4, 2016 in the performance of duty, as alleged. The Board further finds, however, that appellant has not submitted medical evidence sufficient to establish an injury causally related to the September 4, 2016 employment incident.

¹⁶ See *S.E.*, Docket No. 08-2214 (issued May 6, 2009) (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).

¹⁷ *K.C.*, Docket No. 15-0552 (issued November 10, 2015).

¹⁸ See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t); *L.L.*, Docket No. 13-0829 (issued August 20, 2013); *M.P.*, *supra* note 8.

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2017 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 25, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy 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