United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	**Docket No. 17-1266**
	)	**Issued: December 14, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Pelham, AL, 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 May 23, 2017 appellant filed a timely appeal from a November 29, 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 this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a right leg injury causally related to the accepted December 18, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On December 30, 2015 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, while retrieving a package out of the back of her long life vehicle (LLV) on December 18, 2015, she felt a burning injury to the back of her lower right leg. She stopped work on December 23, 2015 and returned on December 30, 2015. The employing establishment controverted appellant's claim, contending that she had not filed a Form CA-1 until two weeks after the alleged injury was to have occurred.

By development letter dated January 14, 2016, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment incident. It noted that medical evidence must be submitted by a qualified physician and that a physician assistant is not considered a qualified physician under FECA. OWCP requested that appellant respond to a questionnaire to substantiate the factual allegations of her claim. It afforded her 30 days to provide the necessary evidence.

Appellant subsequently submitted an undated statement indicating that she initially thought her injury was minor, but the next day she could not put her heel on the floor to walk and called into work sick. She reported texting her supervisor, A.C., and informing her of her injury. Appellant indicated that she was on vacation starting December 21, 2015. She sought medical treatment on December 23, 2015 and her physician put her in a boot and informed her that she had a partially torn muscle. Appellant again reported her injury to management and left an envelope with a doctor's note on December 23, 2015. She did not hear back from her supervisor until December 26, 2015.

In response to OWCP's questionnaire, on January 22, 2016, appellant indicated that her injury occurred when she was retrieving a package that weighed between 35 and 40 pounds and measured two feet by four feet. She noted that on December 18, 2015 she could not locate a manager on duty to report her injury. Appellant reported calling into work sick on Saturday, December 19, 2015 because she was unable to place her heel on the floor to walk. She noted sending a text to her supervisor, A.C., on December 19, 2015 advising her of the injury. Appellant reported experiencing burning pain in the lower right leg immediately after the injury.

By decision dated February 18, 2016, OWCP accepted that the December 18, 2015 employment incident occurred as alleged. However, it denied the claim finding that fact of injury had not been established. OWCP found that appellant failed to submit medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted work incident.

Appellant submitted a work status report from Dr. John Kirchner, a Board-certified orthopedist, dated December 23, 2015, who diagnosed gastroc soleus tear and noted that appellant was unable to work for 10 days. In duty status reports (Form CA-17) dated January 6 and 22, 2016, he diagnosed partial tear of the Achilles and noted that appellant could not resume work. On January 22, 2016 Dr. Kirchner referred appellant for physical therapy. In an attending physician's report (Form CA-20) dated February 17, 2016, he noted that appellant had pulled a leg muscle while retrieving a package from her work vehicle. Dr. Kirchner diagnosed gastroc soleus tear and indicated by checking a box marked "yes" that appellant's condition was caused or

aggravated by an employment activity. He placed appellant in a cam walker boot with heel lifts and indicated that she could return to sedentary work, lifting restricted to 10 to 15 pounds, and no walking. In a duty status report (Form CA-17) dated February 19, 2016, Dr. Kirchner returned appellant to work with restrictions.

In an appeal request form dated March 7, 2016, appellant requested an oral hearing before an OWCP hearing representative which was held on October 14, 2016. In an undated statement, she alleged that A.S., her postmaster, did not want her to file a claim and it took her several days to catch her at work and begin the claim process. Appellant further indicated that her physician failed to electronically submit her medical records.

In a progress note dated December 23, 2015, Dr. Kirchner treated appellant for right ankle pain. Appellant reported feeling a pull in her right leg the prior week and had difficulty standing. Dr. Kirchner noted findings on examination of tenderness on the gastroc soleus complex without an acute tear and intact sensation. He noted that x-rays of the right ankle did not demonstrate abnormalities. Dr. Kirchner again diagnosed gastroc soleus tear and recommended a cam walker boot with heel lifts. He advised that appellant was a postal carrier and was totally disabled for 10 days. On January 22, 2016 Dr. Kirchner treated appellant in follow-up for partial tear of her gastroc soleus complex with symptoms greatly improved since previous treatment. He noted that appellant was mildly tender along her tendoachilles. Dr. Kirchner diagnosed rupture of tendon of the lower extremity. He referred appellant for physical therapy and returned her to work in a sedentary position, lifting limited to 15 pounds, and no walking. Dr. Kirchner reexamined appellant on February 19, 2016 and noted improvement in her condition. He diagnosed rupture of the tendon of the lower extremity and recommended physical therapy. In a duty status report (Form CA-17) dated May 16, 2016, Dr. Kirchner diagnosed gastrocnemius muscle rupture and advised that appellant could resume work regular duty on May 18, 2016.

Appellant submitted an October 26, 2016 statement and copies of text messages to her supervisor, A.C., and her postmaster, A.S., dated December 19 to 26, 2015 relating to a leg injury sustained while delivering mail. She submitted statements dated October 27, 2016, from coworkers, J.D., V.W., and L.G., who noted that on prior occasions management was unavailable and would not answer the telephone.

In an undated statement, Dr. Kirchner noted treating appellant on December 23, 2015 after she sustained a right ankle and calf injury. Appellant reported that the injury occurred on December 18, 2015, while working as a letter carrier. He diagnosed gastroc soleus tear. Dr. Kirchner treated appellant on January 22, February 19, and May 16, 2016 when she underwent immobilization of her foot and physical therapy. He indicated that appellant was working when the injury occurred and opined that her condition was directly caused and related to an on-the-job work injury. Dr. Kirchner released appellant to work.

By decision dated November 29, 2016, an OWCP hearing representative affirmed the February 18, 2016 decision, as modified. The hearing representative advised that the medical evidence of record contained a diagnosis in connection with the claimed injury, but her claim remained denied because the medical evidence of record was insufficient to establish that the accepted work incident of December 18, 2015 caused or contributed to the diagnosed conditions.

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 filed within the applicable time limitation 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. 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 incident.[6]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right leg injury causally related to the accepted December 18, 2015 employment incident.

Appellant submitted an undated statement from Dr. Kirchner, who treated her from December 23, 2015 through May 16, 2016, for a right ankle and calf injury that occurred on December 18, 2015 at work. Dr. Kirchner diagnosed gastroc soleus tear, immobilized her foot, and recommended physical therapy. He indicated that appellant was working when the injury occurred and opined that her condition was directly caused and related to an on-the-job work injury. The Board finds that, although Dr. Kirchner supported causal relationship, he did not provide medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's gastroc soleus tear and the December 18, 2015 work incident.[7] Dr. Kirchner did not explain the process by which retrieving a package from her work vehicle

[3] *Supra* note 2.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

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

[7] *See T.M.*, Docket No. 08-0975 (issued February 6, 2009) (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).

caused the diagnosed conditions and why such condition would not be due to any nonwork factors. As the opinion of appellant's physician regarding causal relationship was conclusory and unexplained, it is insufficient to meet appellant's burden of proof.[8]

Appellant submitted a December 23, 2015 report from Dr. Kirchner who noted findings on examination and diagnosed gastroc soleus tear. Dr. Kirchner recommended a cam walker boot with heel lifts and indicated that appellant was totally disabled. Similarly, in reports dated January 22 and February 19, 2016, he noted that appellant's right ankle symptoms improved and he diagnosed rupture of tendon of the lower extremity. Dr. Kirchner referred appellant for physical therapy and returned her to work in a sedentary light-duty position. Likewise, in a referral form dated January 22, 2016, he referred appellant for physical therapy. The Board finds that these notes are insufficient to establish the claim as he did not provide a history of injury[9] or specifically address whether appellant's employment activities had caused or aggravated a diagnosed medical condition.[10]

Appellant submitted a work status report dated December 23, 2015, and duty status reports (Form CA-17) dated January 6 and 22, 2016, from Dr. Kirchner, who diagnosed partial tear of the Achilles and noted that appellant could not resume work. Similarly, in duty status reports dated February 19 and May 16, 2016, Dr. Kirchner diagnosed gastrocnemius muscle rupture and returned appellant to work with restrictions on February 19, 2016 and regular duty on May 18, 2016. However, these notes do not provide a history of injury,[11] nor offer an opinion on how appellant's employment could have caused or aggravated her condition.[12] Consequently these reports were of no probative value and do not establish appellant's traumatic injury claim.

A February 17, 2016 attending physician's report (Form CA-20) from Dr. Kirchner noted that appellant pulled a leg muscle while retrieving a package from her work vehicle. Dr. Kirchner diagnosed gastroc soleus tear and checked a box marked "yes," that appellant's condition was caused or aggravated by an employment activity. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to

[8] *J.M.*, 58 ECAB 478 (2007) (where the Board found that appellant did not meet his burden of proof in establishing a work-related right wrist condition where his physician provided only conclusory support for causal relationship and did not identify any of the job duties appellant performed at the employing establishment which he believed were responsible for appellant's condition or explain how his work duties at the employing establishment caused or contributed to his condition).

[9] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[10] *A.D.*, 58 ECAB 149 (2006); Docket No. 06-1183 (issued November 14, 2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship).

[11] *Supra* note 9.

[12] *Supra* note 10.

establish a claim.[13] Dr. Kirchner did not explain the reasons why retrieving a package from her work vehicle on December 18, 2015 caused or contributed to the diagnosed medical condition.

Consequently, the Board finds that the medical evidence of record is insufficient to establish a right leg injury causally related to the accepted employment incident of December 18, 2015.

On appeal appellant disagrees with OWCP's decision denying her claim for compensation and notes that she submitted sufficient evidence to establish her claim. As explained above, the medical evidence of record is insufficient to establish that appellant's diagnosed right leg injury is causally related to her employment.

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 a right leg injury causally related to the accepted December 18, 2015 employment incident.

[13] *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2018
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