United States Department of Labor
Employees' Compensation Appeals Board

P.S., Appellant	)	
and	)	**Docket No. 17-0939**
	)	**Issued: June 15, 2018**
U.S. POSTAL SERVICE, CLIFTON STATION, Baltimore, MD, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 27, 2017 appellant filed a timely appeal from a March 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 has established a right ankle injury causally related to an accepted January 14, 2015 employment incident.

[1] Appellant timely requested oral argument before the Board. By order dated September 5, 2017, the Board exercised its discretion and denied the request, finding that the arguments presented on appeal could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 17-0939 (issued September 5, 2017).

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 22, 2015 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 14, 2015 she injured her right ankle after falling from a step while in the performance of duty. The employing establishment alleged that she fell on ice at home on January 12, 2015.[3] Appellant stopped work on January 14, 2015.

A physician assistant evaluated appellant on January 14, 2015 for a right ankle injury. He obtained a history of her twisting her right ankle going down stairs at work. The physician assistant found swelling of the right lateral ankle joint. He advised that x-rays did not show a fracture and diagnosed a right ankle sprain. The physician assistant listed work restrictions and instructed appellant to use crutches.[4]

On January 20, 2015 a physician assistant evaluated appellant for right ankle and foot pain. She diagnosed right ankle pain and a strain and found that appellant could resume modified activity.

In a January 27, 2015 progress report, a physician assistant found lateral swelling of the right ankle with restricted plantar flexion and inversion due to pain. He diagnosed a right ankle sprain and provided work restrictions.

On February 3, 2015 a physician assistant released appellant to resume her regular work duties.

OWCP, by development letter dated March 3, 2015, informed appellant that it had paid a limited amount of medical expenses as her injury appeared minor and was not controverted. It advised that it was now adjudicating her claim, and requested that she submit additional factual and medical information, including a detailed report from her attending physician addressing the cause of any diagnosed condition and its relationship to the identified work incident.

In a January 14, 2015 authorization for examination and/or treatment (Form CA-16), received by OWCP on March 18, 2015, the employing establishment authorized treatment for appellant's right ankle. On the form a physician assistant diagnosed a right ankle sprain and checked a box marked "yes" that the condition was caused or aggravated by the described employment activity of appellant twisting her right ankle. He found that she could perform light work beginning January 15, 2015.

[3] In a January 28, 2015 statement, the employing establishment provided a statement noting that appellant used sick leave on January 12, 2015 after falling at home. On January 13, 2015 appellant advised that she slipped on ice on January 12, 2015 and that her legs and buttock were sore.

[4] A physician assistant completed January 20 and 27, 2015 duty status reports (Form CA-17) setting forth work restrictions. In a February 3, 2015 Form CA-17, a physician assistant found that appellant could perform her regular employment.

By decision dated April 6, 2015, OWCP denied appellant's traumatic injury claim. It found that she had established the occurrence of the January 14, 2015 work incident, but had not submitted medical evidence from a physician supporting that the incident caused an injury.

Appellant, on April 9, 2015, requested a review of the written record before an OWCP hearing representative. In an April 9, 2015 statement, she related that she tripped on steps delivering mail and had to use crutches due to her swollen right ankle. Appellant submitted a February 3, 2015 report from a physician assistant providing examination findings and releasing her to her usual employment.

By decision dated September 25, 2015, the hearing representative affirmed the April 6, 2015 decision. He found that a physician assistant was not considered a physician under FECA and thus determined that appellant had not submitted any competent medical evidence in support of her claim.

In a May 25, 2016 statement, appellant related that the employing establishment referred her to a specific clinic for treatment. She described her injury and subsequent ankle swelling such that she had to use crutches. The employing establishment would not let appellant work while she was on crutches.

Appellant, on June 27, 2016, requested reconsideration. She again described her injury and noted that she had obtained the signature of a physician on her medical reports.

Appellant submitted the January 14, 20, and 27, and February 3, 2015 reports completed by the physician assistant. A physician cosigned the reports.[5]

By decision dated September 22, 2016, OWCP denied modification of its September 25, 2015 decision. It found that, while she had submitted reports signed by a physician, the reports did not contain a discussion of the identified work incident or a finding that the diagnosed condition was causally related to the January 14, 2015 work incident.

On October 13, 2016 appellant requested reconsideration. She submitted the January 14, 2015 report from the physician assistant cosigned by a physician. The form contained a history of appellant twisting her right ankle going down steps at work.

By decision dated January 11, 2017, OWCP denied modification of its September 22, 2016 decision. It found that the January 14, 2015 report did not contain a medical diagnosis.

On February 1, 2017 appellant requested reconsideration. In a January 24, 2017 statement, she described her injury delivering mail and her subsequent treatment, noting that she had submitted medical evidence cosigned by a physician. She resubmitted the reports from the physician assistant dated January 20 and 27, and February 3, 2015.

[5] The signature of the physician is not legible.

By decision dated March 10, 2017, OWCP denied modification of its January 11, 2017 decision. It noted that the medical evidence submitted was provided by a physician assistant and was thus insufficient to demonstrate causal relationship.

On appeal appellant contends that her injury occurred at work and that the medical provider selected by the employing establishment provided her with crutches and instructed her to perform light duty. Her employing establishment had no work available within her restrictions. Appellant asserts that OWCP should have accepted the claim because she was injured performing her work duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA[6] 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, that an injury was sustained while 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.[7] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[8]

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.[9] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[10]

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. 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 claimant.[11]

[6] 5 U.S.C. § 8101 *et seq.*

[7] *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[8] *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

[9] *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

[10] *See T.H.*, 59 ECAB 388 (2008); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

[11] *See I.H.*, 59 ECAB 408 (2008); *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

The Board finds that appellant has not established that the accepted January 14, 2015 employment incident resulted in an injury.[12] Causal relationship is a medical question that must be established by a probative medical opinion from a physician.[13]

Appellant submitted January 14, 20, and 27, and February 3, 2015 progress reports, a January 14, 2015 CA-16 form, and January 20 and 27, and February 3, 2015 CA-17 forms. The reports and forms were completed by physician assistants. A physician assistant, however, is not considered a physician as defined under FECA, and thus these reports are of no probative value on the issue of whether appellant sustained an injury causally related to the accepted January 14, 2015 employment incident.[14]

A physician with an illegible signature subsequently cosigned the January 14, 20, and 27, and February 3, 2015 reports completed by physician assistants. As the report is from a physician with an illegible signature it is of no probative value.[15]

On January 20, 2015 a physician noted that appellant related that her condition had improved and diagnosed a right ankle strain. In a January 27, 2015 report, he listed findings on examination of lateral swelling of the right ankle with restricted plantar flexion and inversion due to pain. The physician diagnosed a right ankle sprain and provided work restrictions. On February 3, 2015 he found that appellant could return to her usual employment. Again, however, the physician did not address causation and thus his findings are of diminished probative value.[16] Further, to be of probative value, a physician must provide a narrative description of the employment incident and a reasoned opinion on whether the employment incident described caused or contributed to the diagnosed medical condition.[17]

On appeal appellant advises that she was injured at work and sought treatment by the provider selected by the employing establishment. She maintains that her claim should be accepted

[12] The Board notes that a Form CA-16 authorization for examination and/or treatment was issued by the employing establishment on January 14, 2015. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).

[13] *See C.W.*, Docket No. 17-0399 (issued June 19, 2017).

[14] *See David P. Sawchuk*, 57 ECAB 316, 320, n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

[15] *Merton J. Sills*, 39 ECAB 572, 575 (1988); *see also C.H.*, Docket No. 17-1568 (issued October 26, 2017).

[16] *See A.M.*, Docket No. 16-1552 (issued July 5, 2017).

[17] *John W. Montoya*, 54 ECAB 306 (2003).

as she was injured at work and the employing establishment could not provide her with light duty. As noted, however, appellant has the burden of proof to submit sufficient medical evidence to demonstrate that the accepted employment incident resulted in an injury.[18] In order to establish causal relationship, she must submit an opinion from a physician based on a complete and accurate factual and medical background, finding that the claimed condition is causally related to the identified work incident and supporting such causation finding with affirmative evidence and medical rationale.[19] Appellant failed to submit such evidence in support of her claim and thus failed to meet her burden of proof.[20]

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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established a right ankle injury causally related to an accepted January 14, 2015 employment incident.

[18] *See K.U.*, Docket No. 17-0798 (issued October 10, 2017).

[19] *See J.W.*, Docket No. 17-0870 (issued July 12, 2017).

[20] *See E.P.*, Docket No. 17-1544 (issued April 10, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 15, 2018
Washington, DC

Christopher J. Godfrey, 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