United States Department of Labor
Employees' Compensation Appeals Board

H.R., Appellant	)	
and	)	**Docket No. 18-0223**
	)	**Issued: June 27, 2018**
U.S. POSTAL SERVICE, LAPEER POST OFFICE, Lapeer, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 November 9, 2017 appellant, through counsel, filed a timely appeal from an August 23, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 a right ankle injury causally related to the accepted November 21, 2016 employment incident.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 23, 2016 appellant, then a 35-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1), alleging that, on November 21, 2016, she sustained a right ankle sprain when her right ankle turned and popped while she was descending slippery steps from a porch, while in the performance of her federal employment duties. She stopped work on November 23, 2016.

In a supplemental statement, appellant asserted that she was assigned to pick up eight packages from 2210 Broker Road. When she arrived, there were 77 packages waiting for pick up. On her fourth trip to retrieve the packages, appellant's right ankle "went all the way out" and she hit some decorations, but did not fall all the way down. Appellant informed her supervisor that she had twisted her ankle. She sought medical treatment on November 22, 2016. Appellant provided a note dated November 22, 2016 from a nurse practitioner with an illegible signature.

In a development letter dated November 30, 2016, OWCP requested additional factual and medical evidence in support of appellant's claim. It afforded her 30 days for a response.

Appellant underwent right ankle x-rays on January 6, 2017 which were read as normal. Dr. John Olenyn, Board-certified orthopedic surgeon, completed a form report on January 9, 2017 and diagnosed sprained right ankle.

By decision dated January 13, 2017, OWCP denied appellant's traumatic injury claim, finding that although she had established that the employment incident occurred as alleged, she had not provided medical evidence of diagnosed condition as required to establish fact of injury.

On December 12, 2016 Dr. Olenyn noted appellant's history of injury on November 21, 2016 when ascending stairs and noted "sounds like she sustained an inversion injury of the ankle." He diagnosed right ankle sprain and treated appellant with a protective boot. Dr. Olenyn recommended that appellant undergo physical therapy and wean herself from the protective boot. He released appellant to light-duty work on December 12, 2016. Dr. Olenyn examined appellant on January 9, 2017 and continued to diagnose right ankle sprain.

In a letter dated January 25, 2017, appellant, through counsel, requested an oral hearing before an OWCP hearing representative.

Dr. Olenyn examined appellant on February 13, 2017 and noted that she had not started physical therapy, but was still wearing braces and working with restrictions. In a March 13, 2017 note, he diagnosed right ankle sprain with no swelling, deformity, and crepitus. On March 30, 2017 Dr. Olenyn released appellant to full-duty work.

Appellant testified during the oral hearing held on June 22, 2017. She described the events of November 21, 2016 as being assigned Route 2 and a pick up notice for packages off of Bullock Road.[3] Appellant was notified of 8 packages for pick up, but found 77 packages when she arrived

[3] As previously noted, in her initial statements appellant indicated her injury occurred on Broker Road rather than Bullock Road. It is unclear from the record whether this was a misstatement by appellant or an error of the court reporter.

at the address. She notified her supervisor of this *via* telephone and the supervisor instructed her to retrieve all the packages. On her fourth trip to collect the packages, appellant's right ankle "went all the way out" appellant felt and heard a pop and fell to her right.) When she returned to the employing establishment appellant reported the incident to her manager, D.H. The following day, appellant sought medical treatment. She denied any previous right ankle injuries.

D.H. responded in an undated statement and disputed appellant's assignment to pick up packages on November 21, 2016 on Bullock Road. She did recall appellant's statement to her on November 21, 2016 that she had slipped and turned her ankle. D.H. also provided her assessment of the medical evidence as well as appellant's condition on November 21, 2016. Appellant responded to D.H.'s statement on August 14, 2017 and corrected the address of her injury to 2210 Broker Road as noted in her original statement.

By decision dated August 23, 2017, OWCP's hearing representative found that appellant had established that the November 21, 2016 employment incident occurred as alleged, and that she had provided medical evidence of a diagnosed condition (right ankle sprain). However, he denied appellant's claim as the medical evidence of record did not establish causal relationship between her diagnosed condition and her accepted employment incident.

LEGAL PRECEDENT

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

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 and place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

Rationalized medical opinion evidence is generally 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

[4] *Supra* note 1.

[5] *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *Gary J. Watling*, 52 ECAB 357 (2001).

[6] *A.D., id.* 5; *T.H.*, 59 ECAB 388 (2008).

employment factors identified by the claimant.[7] This medical opinion must include an accurate history of the employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right ankle injury causally related to the accepted November 21, 2016 employment incident.

It is undisputed that on November 21, 2016 appellant was descending stairs and slipped while collecting packages in the performance of her federal employment duties. However appellant failed to submit sufficient medical evidence to establish that this employment incident caused or aggravated her right ankle condition.[9]

In support of her claim, appellant submitted medical reports from Dr. Olenyn. Dr. Olenyn described appellant's employment activities on November 21, 2016 as ascending stairs and noted "sounds like she sustained an inversion injury of the ankle." He first examined appellant on December 12, 2016 due to right ankle pain and diagnosed right ankle sprain. The Board finds that the opinion of Dr. Olenyn is of limited probative value. While Dr. Olenyn suggested that appellant's injuries were caused by the November 21, 2016 employment incident, he did not provide a proper history of injury. Appellant alleged that she was descending stairs, slipped, and fell twisting her ankle. However, Dr. Olenyn related that appellant was ascending stairs when she inverted her right ankle. The Board has held that medical opinions based on an inaccurate history, are of diminished probative value.[10]

Dr. Olenyn also failed to provide a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely how a possible inversion injury could result in a right ankle sprain.[11] Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.[12] The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.[13] Without explaining how physiologically the

[7] *A.D., supra* note 5; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *S.H.*, Docket No. 17-1660 (issued March 27, 2018); *James Mack*, 43 ECAB 321 (1991).

[9] *M.E.*, Docket No. 17-1857 (issued February 2, 2018).

[10] *See J.F.*, Docket No. 17-1075 (issued January 8, 2018).

[11] *S.H., supra* note 8; *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

[12] *S.H., supra* note 8; *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

[13] *S.H., supra* note 8; *Lee R. Haywood*, 48 ECAB 145 (1996).

movements involved in the accepted employment incident caused or contributed to the diagnosed condition, Dr. Olenyn's opinion on causal relationship is equivocal in nature and of limited probative value.[14] The Board disagrees with counsel's assessment of the medical evidence.

Appellant submitted reports from a nurse practitioner. However, the Board has held that nurse practitioners are not considered physicians under FECA. Therefore, their reports are not considered medical evidence and have no probative value.[15]

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relationship.[16] Appellant's honest belief that the November 21, 2016 employment incident caused her medical conditions is not in question, but that belief, however sincerely held, does not constitute the medical evidence to establish causal relationship.[17]

On appeal counsel contends that the medical evidence is sufficient to meet appellant's burden of proof and that OWCP's decision "nit picks" even though causal relationship is clear and unequivocal. For the reasons explained above, the Board finds that the evidence of record is insufficient to meet appellant's 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 not met her burden of proof to establish a right ankle injury causally related to the accepted November 21, 2016 employment incident.

[14] *S.H., supra* note 8; *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-0113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

[15] *See F.M.*, Docket No. 16-1848 (issued March 16, 2018); *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).

[16] *G.E.*, Docket No. 17-1719 (issued February 6, 2018); *D.D.*, 57 ECAB 734 (2006).

[17] *G.E, id.*; *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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