United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
	)	
and	)	**Docket No. 18-0883**
	)	**Issued: November 20, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Monsey, NY, 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 March 19, 2018 appellant filed a timely appeal from a November 15, 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 has met his burden of proof to establish a left lower extremity condition causally related to an accepted September 11, 2017 employment incident.

FACTUAL HISTORY

On September 11, 2017 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, while delivering mail at 12:52 p.m. on that date, he stepped on something hard and twisted his left leg. In a statement accompanying his claim form, appellant

[1] 5 U.S.C. § 8101 *et seq.*

indicated that after he twisted his left leg, he continued driving his delivery loop. Appellant experienced the onset of left heel pain as he walked. He telephoned his supervisor and informed him of his left lower extremity symptoms. The supervisor instructed him to stop delivering mail so as not to worsen any injury. Appellant stopped work on the date of injury.

On September 11, 2017 the employing establishment issued appellant a properly completed authorization for examination and/or treatment (Form CA-16) which indicated that he was authorized to seek medical treatment for his left lower extremity injury. In Part B of the Form CA-16, Nesyah Shaesteh, a physician assistant, diagnosed a left ankle sprain. She held appellant off work.

By development letter dated October 4, 2017, OWCP notified appellant of the deficiencies of his claim. Appellant was also provided a list of questions for his physician regarding how the alleged employment incident would cause the claimed left lower extremity injury. OWCP emphasized that a detailed, well-rationalized opinion from a physician regarding causal relationship, was crucial to his claim. It afforded him 30 days to submit additional medical and factual evidence.

In response, appellant submitted a September 20, 2017 left ankle x-ray report which revealed findings within normal limits.

In a report dated September 27, 2017, Dr. Andrew Somberg, an attending Board-certified orthopedic surgeon, related appellant's account of the September 11, 2017 employment incident in which he "was not looking and took a misstep, twisting his leg, with the immediate onset of left heel and left knee pain." He noted that x-rays obtained on the date of injury were within normal limits. Appellant continued to complain of left heel pain. On examination, Dr. Somberg noted tenderness of the left patellar tendon, left Achilles tendon insertion, and of the left plantar aponeurosis. He obtained x-rays of the left knee, foot, and ankle which were within normal limits. Dr. Somberg diagnosed left plantar fasciitis, left patellar tendinitis, and left Achilles tendinitis. He concluded that "the incident the patient described was the competent medical cause of this injury." Dr. Somberg explained that appellant's complaints were consistent with the history of injury and that appellant's history of injury was also consistent with his findings. He held appellant off work and prescribed a semi-rigid orthosis.

In a report dated October 11, 2017, Dr. Somberg noted that appellant's symptoms had improved. He returned her to light-duty work with no prolonged standing or walking. On October 25, 2017 Dr. Somberg noted that appellant's left knee pain had lessened. He returned her to full, unrestricted duty as of October 31, 2017.

Appellant returned to full-duty work, effective October 31, 2017.

By decision dated November 15, 2017, OWCP denied appellant's claim. It accepted that the September 11, 2017 employment incident occurred at the time, place, and in the manner alleged. However, OWCP denied the claim as the medical evidence of record contained insufficient rationale to establish a causal relationship between the accepted employment incident and the claimed left lower extremity injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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.[3] 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.[4]

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether fact of injury has been established. First, an employee has the burden of proof to demonstrate the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish causal relationship between the employment incident and the alleged disability or condition for which compensation is claimed.[6] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[7]

To establish causal relationship between the condition alleged, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.[8] 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 incident identified by the claimant. This medical opinion must include an accurate history of the employee's 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.[9]

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[2] *Id*.

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

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

[5] *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[6] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[7] *D.J.*, Docket No. 17-0364 (issued April 13, 2018); *K.B.*, Docket No. 17-1363 (issued February 14, 2018), *Gary J. Watling*, *id*.

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983); *see also G.R.*, Docket No. 18-0430 (issued September 13, 2018).

[9] *G.R.*, *id*.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left lower extremity condition causally related to the accepted September 11, 2017 employment incident.

Appellant submitted a September 11, 2017 report from Ms. Shaesteh, a physician assistant. This opinion is not competent medical evidence as physician assistants are not considered physicians under FECA.[10]

Dr. Somberg, an attending Board-certified orthopedic surgeon, diagnosed left plantar fasciitis, left patellar tendinitis, and left Achilles tendinitis on September 27, 2017. He noted September 11, 2017 as the date of injury and related appellant's account of the accepted employment incident. However, Dr. Somberg did not provide any medical reasoning as to how and why the accepted September 11, 2017 employment incident would result in the diagnosed left lower extremity injuries. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how physiologically an employment injury could have caused or aggravated a medical condition.[11] Thus, this report is insufficient to establish appellant's claim.

In order to establish causal relationship, a physician must provide an opinion that the injury or condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale, and be based upon a complete and accurate medical and factual background of the claimant.[12] Appellant was provided an opportunity to submit evidence to establish how the claimed left lower extremity injury occurred. By development letter dated October 4, 2017, OWCP requested that appellant obtain an opinion from his attending physician with medical rationale addressing causal relationship. Appellant has not submitted a medical report sufficient to show that the diagnosed left plantar fasciitis, left patellar tendinitis, and left Achilles tendinitis were causally related to the accepted September 11, 2017 employment incident, and thus has not met his burden of proof.[13]

On appeal appellant asserts that he did not receive proper notification from OWCP that his claim had been denied and was thus deprived of the opportunity to respond. The Board notes that the documents of record from OWCP to appellant, including the November 15, 2017 decision, were addressed to him at his address of record and does not indicate that it was returned as undeliverable. Under the mailbox rule, it is presumed in the absence of evidence to the contrary, that a notice properly mailed to an individual in the ordinary course of business was received by

[10] *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). *E.T.*, Docket No. 17-0265 (issued May 25, 2018) (physician assistants are not considered physicians under FECA).

[11] *See F.L.*, Docket No. 17-1613 (issued August 15, 2018).

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

[13] *K.B.*, *supra* note 7.

that individual. This presumption arises where it appears from the record that the notice was properly addressed and duly mailed.[14] The current record is devoid of evidence to rebut the presumption that appellant received the November 15, 2017 decision.[15]

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 met his burden of proof to establish a left lower extremity condition causally related to an accepted September 11, 2017 employment incident.[16]

[14] *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *Newton D. Lashmett*, 45 ECAB 181 (1993) (mailbox rule).

[15] *L.B.*, *id*.

[16] The Board notes that appellant was issued a Form CA-16 by the employing establishment on September 11, 2017. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expense to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employing establishment directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 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