

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

D.H., Appellant)	
)	
and)	Docket No. 18-0415
)	Issued: September 13, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
East Hampton, NY, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 December 21, 2017 appellant, through counsel, filed a timely appeal from an August 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.³

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.*

³ The record provided to the Board includes evidence received after OWCP issued its August 2, 2017 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

ISSUE

The issue is whether appellant has established bilateral lower extremity conditions causally related to the accepted June 27, 2015 employment incident.

FACTUAL HISTORY

On June 29, 2015 appellant, then a 53-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2015 at 5:00 p.m. she was exiting her vehicle in the employing establishment parking lot and felt her right leg give way. She stumbled and caught herself from falling. However, in the process of doing so, she pulled her right leg muscles and strained her right knee and left ankle. Appellant stopped work on June 27, 2017. The employing establishment controverted the claim.⁴

In a report dated June 22, 2015, Dr. Alexander Finger, a Board-certified orthopedic surgeon, related that appellant had experienced right knee and hip pain after shoveling snow approximately six months prior. Appellant also reported a month or two after that, she suffered a fall and landed directly on her right knee. Since that time, she had continued pain. Dr. Finger diagnosed right hip strain/sprain.

On July 1, 2015 Dr. Carl S. Goodman, an osteopath Board-certified in emergency medicine, treated appellant at Brookhaven Memorial Hospital Medical Center. Appellant reported that her injury occurred when she was exiting her vehicle and her leg muscles gave away, causing her to twist her left ankle. She indicated that she fell due to leg weakness from arthritis. Appellant also felt that something had popped in her back. She noted that she had previously hurt her leg in the snow in January. Dr. Goodman noted that appellant's July 1, 2015 x-ray of the left ankle and venous left lower extremity ultrasound revealed negative findings. He opined that appellant's symptoms were consistent with Achilles tendinitis.

In a July 14, 2015 report, Dr. Finger noted that appellant had previously been seen for a right hip strain. Dr. Finger indicated that she had been doing well until June 27, 2015, when she had right leg pain, almost fell, and braced her fall with her left foot and ankle. An assessment of right hip adductor strain and left Achilles strain was provided. He indicated that appellant could not return to work, and he referred her to physical therapy. In a July 14, 2015 duty status report, Form CA-17, Dr. Finger opined that appellant's diagnoses of left ankle sprain and right hip sprain were due to the June 27, 2015 incident when appellant's right leg/knee gave out while appellant was getting out of her work truck.

By August 5, 2015 development letter, OWCP advised appellant of the deficiencies in her claim. Appellant was provided a questionnaire for her completion regarding the circumstances of the injury. She was also asked to provide a narrative medical report from her physician which contained a detailed description of findings and diagnoses, explaining how the claimed work

⁴ The employing establishment indicated that appellant worked for one hour after the alleged incident, but did not report the injury until two days later. It also noted that she did not seek medical attention until July 1, 2015.

incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received an August 11, 2015 statement and an undated statement wherein appellant stated that, on February 21, 2015, she twisted her right leg while delivering mail in the snow. She was advised by the Postmaster not to report the injury and she did not receive any immediate medical treatment. Appellant indicated that she developed chronic muscular pain, strain and weakness in her right leg, which caused her leg to give away several times. She indicated that she believed that this was the cause of her right leg instability on June 27, 2015. Appellant recounted that she also sought treatment at Peconic Bay Medical Center on June 17, 2015 for her right knee and indicated that the x-rays showed she had arthritis in the right knee and right hip. She was referred to Dr. Finger and initially saw him on June 22, 2015. Dr. Finger diagnosed her with strain of the muscle, fascia, and tendon of the hip, prescribed physical therapy and medication for the arthritis. Appellant stated that on June 27, 2015 her supervisor, A.H., and coworker, M.F., were no more than 10 feet away from her vehicle and had heard her scream when she hurt her leg and ankle. She continued to work and finish her job despite the pain. The next day, she applied ice to her left ankle and heat and ointment to her right knee and leg muscles.

On August 18, 2015 the employing establishment completed an authorization for examination and/or treatment (Form CA-16), which was received by OWCP. It listed the date of injury as June 27, 2015 and indicated a sprain/strain of right hip and thigh and left Achilles tendon strain.

In the attending physician's portion of the Form CA-16, Dr. Finger included a history of injury that appellant had hurt herself stepping out of a mail truck. He diagnosed right hip and left ankle sprain, and indicated by checking a box marked "yes" that the conditions were employment related. Dr. Finger explained that appellant "felt pain in [right] hip and [left] ankle getting out of mail truck."

In August 19, 2015 duty status report and work capacity evaluation form, Dr. Finger held appellant off work due to right ankle sprain/right hip sprain, which he opined was due to the June 27, 2015 employment incident.

Follow-up reports, duty status reports, and attending physician's reports from Dr. Finger regarding appellant's right hip strain and left Achilles tendinitis were received. On September 25, 2015 Dr. Finger advised that appellant was able to return to work without restrictions on October 15, 2015. In an October 1, 2015 attending physician report (Form CA-20), he opined that appellant's right hip sprain and left ankle sprain were caused or aggravated by the June 27, 2015 work incident as appellant "felt pain at work stepping out of mail truck."

By decision dated October 19, 2015, OWCP denied the claim as the evidence was insufficient to establish that the injury occurred in the performance of duty and that the evidence indicated that the injury was caused by a preexisting condition.

On October 26, 2015 appellant, through counsel, requested a telephonic hearing by an OWCP hearing representative. A hearing was scheduled for June 13, 2016. On June 13, 2016 counsel requested a review of the written record.

OWCP received an October 15, 2015 magnetic resonance imaging (MRI) scan report of appellant's right knee which revealed a lateral meniscus tear; degeneration of medial gastrocnemius and hamstrings with bursitis; no fracture; small joint effusion; and post-traumatic scarring of the medial infrapatellar fat. A November 15, 2015 MRI scan of appellant's right hip revealed mild osteoarthritis, right hip; small reactive joint effusion; intrasubstance degeneration and nondisplaced tearing, acetabular labrum. No fracture or avascular necrosis (AVN) was seen. Degenerative change, lower lumbar spine, incompletely imaged, was noted.

By decision dated August 24, 2016, a representative from OWCP's Branch of Hearings and Review vacated the prior decision and remanded the case to OWCP for further factual development. The hearing representative directed OWCP to obtain a statement from the employing establishment as to whether the alleged injury occurred on its premises. OWCP was also directed to obtain additional information from appellant as to why she did not work on June 28, 2015, to respond to Dr. Goodman's July 1, 2015 report that appellant fell due to weakness from arthritis, and to explain why she did not file a claim for the February 21, 2015 injury.

In letters dated August 25, 2016, OWCP requested that appellant and the employing establishment provide additional information as noted in its hearing representative's decision.

On December 7, 2016 the Postmaster verified that the June 27, 2015 injury occurred on its premises during the performance of duty. She also related that when appellant reported the June 27, 2015 injury, she noted that she had a preexisting condition and was not sure where she was hurt/injured. Appellant did not respond to OWCP's August 25, 2016 letter.

By decision dated January 11, 2017, OWCP denied the claim as the factual component of fact of injury had not been established.

On January 23, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative.

A telephonic hearing was held on June 28, 2017. Counsel argued that fact of injury had been established and the medical evidence established the claim. No new evidence was received.

By decision dated August 2, 2017, another OWCP hearing representative modified the prior decision to reflect the factual component of fact of injury was in fact established. However, she affirmed the denial of the claim as the medical evidence of record was insufficient to support that the diagnosed conditions were causally related to the accepted June 27, 2015 employment incident. OWCP's hearing representative found that the medical evidence did not contain sufficient rationale to explain how the June 27, 2015 employment incident caused or contributed to the diagnosed conditions and failed to differentiate the diagnosed conditions from appellant's underlying conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ 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.⁶ 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.⁷

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.⁸ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁹

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.¹⁰

ANALYSIS

The Board finds that appellant has not established that her diagnosed bilateral lower extremity conditions were causally related to the accepted June 27, 2015 employment incident.¹¹

In his July 1, 2015 report, Dr. Goodman provided a history of appellant's June 27, 2015 employment incident. He also noted that appellant had previously hurt her leg in the snow in January and had weakness from arthritis. He noted that appellant felt herself falling from such

⁵ *Supra* note 2.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000).

¹¹ *See Robert Broome*, 55 ECAB 339 (2004).

weakness while getting out of her work vehicle on June 27, 2015. Dr. Goodman diagnosed Achilles tendinitis. However, Dr. Goodman's opinion is not well rationalized. Dr. Goodman failed to provide any medical explanation as to whether appellant's current diagnosed condition was caused or aggravated by the June 27, 2015 employment incident. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹² Thus, Dr. Goodman's opinion is of limited probative value.¹³

Prior to the June 27, 2015 employment incident, Dr. Finger noted appellant's diagnosis of right hip strain/sprain in his June 22, 2015 report. In his July 14, 2015 report, he noted that appellant was seen previously for a right hip strain and that she was doing well until June 27, 2015 when she had right leg pain and almost fell. He diagnosed right hip adductor stain and left Achilles strain. Dr. Finger, however, also failed to provide any rationalized medical explanation as to how appellant's current diagnosed conditions were caused or aggravated by the June 27, 2015 employment incident. This is especially important since he related that appellant had preexisting right hip conditions.¹⁴ Dr. Finger's opinion is of limited probative value on the issue of causal relationship as he did not offer an opinion regarding the cause of appellant's condition.¹⁵

In duty status reports of July 14 and August 19, 2015, Dr. Finger opined that appellant's left ankle sprain was due to the June 27, 2015 employment incident. In an October 1, 2015 attending physician's report, he also opined that appellant's left ankle sprain was caused or aggravated by the June 27, 2015 work incident as appellant "felt pain at work stepping out of mail truck." While he diagnosed a left ankle sprain, he did not explain how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition.¹⁶ Thus, these reports are of limited probative value.

In the attending physician's report portion of the CA-16, Dr. Finger indicated by checking a box marked "yes" that appellant's diagnosed conditions of right hip and left ankle sprain were causally related to the accepted June 27, 2015 employment incident. He explained that appellant experienced pain to these areas when exiting the mail truck. Dr. Finger did not, provide rationale explaining how the mechanism of exiting her mail truck physiologically caused any employment-related condition.¹⁷ Without such, his report is of limited probative value and insufficient to establish appellant's claim.

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. *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹³ *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

¹⁴ *See M.D.*, Docket No. 17-0478 (issued July 5, 2018).

¹⁵ *See supra* note 12.

¹⁶ *See V.J.*, Docket No. 17-0358 (issued July 24, 2018).

¹⁷ *See id.*

Appellant also submitted diagnostic reports. However the diagnostic reports are insufficient to establish appellant's claim as they fail to offer any opinion regarding causal relationship.¹⁸

Accordingly, the Board finds that the medical evidence of record does not contain a well-rationalized medical opinion establishing that appellant's diagnosed conditions were causally related to the accepted June 27, 2015 employment incident. OWCP advised appellant of the type of medical evidence necessary to establish her claim. Appellant failed to submit appropriate medical documentation in response to OWCP's request.¹⁹ As such, she has failed to meet her burden of proof.

On appeal counsel contends that appellant had provided *prima facie* medical evidence which showed causation. OWCP gave proper consideration to all evidence she submitted. As previously noted causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Appellant has not submitted sufficiently-rationalized medical evidence in this case and, therefore, has not met 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established bilateral lower extremity conditions causally related to the accepted June 27, 2015 employment incident.²¹

¹⁸ See *W.S.*, Docket No. 17-1769 (issued July 26, 2018).

¹⁹ See *D.B.*, Docket No. 16-1219 (issued November 8, 2016); see also *T.H.*, Docket No. 15-0772 (issued May 12, 2016).

²⁰ The record contains a Form CA-16 which lists the date of injury as June 27, 2015 and which indicates a sprain/strain of right hip and thigh and left Achilles tendon strain. The Board notes that where an 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. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003).

²¹ See *R.C.*, Docket No. 17-0372 (issued May 3, 2018).

ORDER

IT IS HEREBY ORDERED THAT the August 2, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 13, 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