

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

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**H.B., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS HEALTH ADMINISTRATION,  
Washington, DC, Employer**

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**Docket No. 18-0781  
Issued: September 5, 2018**

*Appearances:*

*Erik B. Blowers, Esq., for the appellant  
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 4, 2018 appellant, through counsel, filed a timely appeal from a December 4, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 her burden of proof to establish a left foot injury due to the accepted April 30, 2013 employment incident.

**FACTUAL HISTORY**

On April 26, 2016 appellant, then a 65-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 30, 2013 she sustained an injury while at work

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

when a patient in a wheelchair ran over her left foot. She asserted that she had a lump on the top of her left foot which caused pain in her left foot, including the left big toe.<sup>2</sup>

In a May 2, 2016 development letter, OWCP noted that appellant did not submit any evidence in support of her Form CA-1 and it requested that she submit evidence, including a physician's opinion supported by a medical explanation as to how the reported April 30, 2013 employment incident caused or aggravated a medical condition. It requested that she complete and return an attached questionnaire which posed various questions regarding the circumstances of her claimed employment injury and the course of her medical treatment. OWCP afforded appellant 30 days to submit a response.

In a May 16, 2016 response to the questionnaire, appellant advised that on April 30, 2013 a patient backed her electric wheelchair directly over the upper part of her left foot. She indicated that she sought treatment at the health unit of the employing establishment immediately after the April 30, 2013 injury occurred. Appellant asserted that she had not sustained any other injury to her left foot.

In a duty status report (Form CA-17) dated April 30, 2013, an individual with an illegible signature listed the date of injury as April 30, 2013 and the mechanism of injury as the "left foot having been run over by a veteran on a scooter." The individual noted left foot contusion as the "diagnosis due to injury" and indicated that appellant could not work.

In a May 2, 2013 disability certificate, Dr. Howard Osterman, an attending podiatrist, noted that appellant was incapacitated from work from April 30 to May 5, 2013 and he advised that she could return to work on May 6, 2013 "as tolerated after left foot [illegible]."

The findings of May 2, 2013 x-rays of appellant's left foot contained an impression of mild degenerative changes of the left first metatarsophalangeal joint.

In a May 11, 2016 report, Dr. Panos Labropoulos, an attending Board-certified orthopedic surgeon specializing in foot/ankle surgery, indicated that appellant presented for evaluation of her left foot. Appellant reported that three years prior she had a crush injury of her left foot which was treated with a boot for a few days, after which she returned to her regular activities. Dr. Labropoulos noted that appellant further reported that she recently noticed swelling or what she called a cyst on the dorsum of her left foot. Appellant complained of moderate-to-severe pain and burning sensation on the plantar surface of her left foot. Dr. Labropoulos detailed the findings of the physical examination he conducted on May 11, 2016, noting that there was swelling on the dorsum of appellant's left foot and that she had mild tenderness/pain on direct palpation and passive stretching of the extensor tendon. He advised that no other abnormality could be detected upon physical examination. Dr. Labropoulos indicated that he obtained x-rays on May 11, 2016 which did not

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<sup>2</sup> On the reverse of the form, appellant's immediate supervisor indicated that the employing establishment was controverting appellant's claim because the April 30, 2013 injury was not reported on a Form CA-1 within 30 days. Appellant did not stop work.

show any significant abnormality.<sup>3</sup> He prescribed anti-inflammatory medication and noted, “Diagnosis is residuals of previous injury and extensor tenosynovitis.”

By decision dated June 8, 2016, OWCP denied appellant’s claim for an April 30, 2013 employment injury. It accepted the occurrence of the April 30, 2013 employment incident in the form of a patient in a wheelchair running over appellant’s left foot. However, OWCP further found that appellant failed to submit medical evidence sufficient to establish a specific condition causally related to the accepted employment incident.<sup>4</sup>

On July 7, 2016 appellant requested a hearing with a representative of OWCP’s Branch of Hearings and Review. During the hearing, held on October 25, 2016, she testified regarding the left foot symptoms that she experienced after a wheelchair ran over her left foot on April 30, 2013.

Appellant submitted a June 23, 2016 report from Dr. Labropoulos, who provided brief findings from the left foot examination he conducted on that date.<sup>5</sup> Dr. Labropoulos diagnosed extensor tenosynovitis and possible midfoot arthritis (not visible on recent x-rays).

In an October 4, 2016 report, Dr. Osterman indicated that appellant reported for follow-up care for a “left foot injury from a wheelchair on [April 30, 2013]” and noted that she still reported pain and discomfort from this injury. He reported the findings of the physical examination he conducted on October 4, 2016, noting that she reported tenderness upon palpation of the midfoot region of her left foot and upon palpation of her left peroneal nerve. Dr. Osterman advised that there was a small palpable mass over the midtarsal region of appellant’s left foot and he diagnosed ganglion of the left ankle/foot, pain in left ankle and joints of the left foot, and left foot contusion (subsequent encounter). He noted that he was producing a report for her “with respect to [appellant’s] left foot injury sustained at work on [April 30, 2013]” and indicated that she continued to have symptoms associated with the injury and had undergone many treatments over the prior three years. Dr. Osterman discussed the possibility of surgery to remove the left foot ganglion and noted that appellant did not wish to proceed with such treatment.

By decision dated January 10, 2017, OWCP’s hearing representative affirmed OWCP’s June 8, 2016 decision. The hearing representative noted that the occurrence of the April 30, 2013 employment incident had been accepted in the form of a patient in a wheelchair running over appellant’s left foot. However, she further found that appellant still had not submitted rationalized medical evidence sufficient to establish a specific condition causally related to the accepted employment incident.

Appellant submitted an August 25, 2017 report from Dr. Francisco Pizarro, an attending podiatrist, who indicated that he had been treating her since June 7, 2017 and had been provided

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<sup>3</sup> The record includes a report of May 11, 2016 x-rays of appellant’s left foot with an impression of “normal left foot” and findings of no acute fracture or bony lesion, normal bone mineralization, lack of foreign body, and normal joint spaces.

<sup>4</sup> OWCP noted that Dr. Labropoulos’ May 11, 2016 report lacked sufficient medical rationale to establish appellant’s claim for an April 30, 2013 employment injury.

<sup>5</sup> Dr. Labropoulos noted that appellant reported that her left foot was injured “many months, over a year ago.”

with medical records pertaining to her claimed 2013 foot injury. Dr. Pizarro indicated that his diagnosis was predicated upon the taking of a careful history of her injury and its etiology, and upon performing a meticulous physical examination to corroborate his diagnosis of “ganglion cyst secondary to trauma.” He advised that he had considered other means by which appellant’s injury, in its present state, could have occurred. Dr. Pizarro advised that she reported that on April 30, 2013 her left foot was run over by a wheelchair at work. He noted that appellant provided evidence from Dr. Osterman containing a history of the April 30, 2013 injury and examination findings in close proximity to the date of injury. Dr. Pizarro advised that there was evidence of immediate treatment for the April 30, 2013 injury and loss of work until May 6, 2013. He indicated that this evidence had “no controversion as to its veracity” and noted, “The history related, the immediate symptoms noted, the subsequent issues, medical treatment, and findings surrounding this injury and the now present cyst, lead me to conclude to a reasonable medical certainty that the injury of April 30, 2013 was the cause of [appellant’s] current condition and impairment for her left foot.”

By decision dated December 4, 2017, OWCP denied modification of its January 10, 2017 decision. It noted that the Dr. Pizarro’s August 25, 2017 report lacked sufficient medical rationale to establish appellant’s claim for an April 30, 2013 employment injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> 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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>7</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the 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.<sup>9</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

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<sup>6</sup> See *supra* note 1.

<sup>7</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

<sup>9</sup> *Julie B. Hawkins*, 38 ECAB 393 (1987).

<sup>10</sup> *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is 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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury due to the accepted April 30, 2013 employment incident.

The Board notes that, although appellant established the occurrence of the April 30, 2013 employment incident in the form of a patient in a wheelchair running over her left foot, she failed to submit medical evidence sufficient to establish a specific condition causally related to the accepted employment incident.

Appellant submitted an April 30, 2013 duty status report in which an individual with an illegible signature listed the date of injury as April 30, 2013 and the mechanism of injury as the left foot having been run over by a veteran on a scooter. The individual noted left foot contusion as the “diagnosis due to injury” and indicated that she could not work. The submission of this report does not establish appellant’s claim for an April 30, 2013 employment injury because it does not constitute probative medical evidence given that there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). The Board has held that a medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.<sup>12</sup>

In a May 2, 2013 disability certificate, Dr. Osterman indicated that appellant was incapacitated from work from April 30 to May 5, 2013 and advised that she could return to work on May 6, 2013 “as tolerated after left foot [illegible].” However, this note is of no probative value of the relevant issue of this case because he did not provide any opinion on the cause of her disability for the specified period. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee’s condition is of no probative value on the issue of causal relationship.<sup>13</sup>

In a May 11, 2016 report, Dr. Labropoulos indicated that appellant reported that three years prior she had a crush injury of her left foot which was treated with a boot for a few days, after which she returned to her regular activities. Appellant further reported that she recently noticed swelling or what she called a cyst on the dorsum of her left foot. Dr. Labropoulos detailed the findings of the physical examination he conducted on May 11, 2016, noting that there was swelling on the dorsum

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<sup>11</sup> See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>12</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

<sup>13</sup> See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

of her left foot and that she had mild tenderness/pain on direct palpation and passive stretching of the extensor tendon. He advised that no other abnormality could be detected upon physical examination. Dr. Labropoulos indicated that he obtained x-rays on May 11, 2016 which did not show any significant abnormality.<sup>14</sup>

Although Dr. Labropoulos noted in this report that appellant's diagnosis was "residuals of previous injury and extensor tenosynovitis," his report is of limited probative value in establishing appellant's claim for an April 30, 2013 employment injury because he did not provide adequate medical rationale in support of his opinion on causal relationship. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how an employment activity could have caused or aggravated a medical condition.<sup>15</sup> Although Dr. Labropoulos noted that appellant reported a 2013 crush injury of her left foot, his opinion is not based on a complete factual and medical history because he did not provide a description of the accepted April 30, 2013 employment incident, *i.e.*, the running over of appellant's left foot by an electric wheelchair. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete factual and medical history.<sup>16</sup> Dr. Labropoulos diagnosed "residuals of previous injury and extensor tenosynovitis" but he did not explicitly detail the specific residuals to which he referred or otherwise provide medical rationale explaining how the accepted April 30, 2013 employment incident could have caused appellant's left foot condition, including extensor tenosynovitis, which was observed three years later. He did not explain why some cause other than the accepted April 30, 2013 employment incident was not solely responsible for her observed left foot condition in 2016.<sup>17</sup>

In an October 4, 2016 report, Dr. Osterman indicated that appellant reported for follow-up care for a "left foot injury from a wheelchair on [April 30, 2013]" and noted that she still reported pain and discomfort from this injury. He advised that there was a small palpable mass over the midtarsal region of her left foot and he diagnosed ganglion of the left ankle/foot, pain in left ankle and joints of the left foot, and left foot contusion (subsequent encounter). Dr. Osterman noted that he was producing a report for appellant "with respect to [appellant's] left foot injury sustained at work on [April 30, 2013]" and indicated that she continued to have symptoms associated with the injury and had undergone many treatments over the prior three years.

The Board finds that Dr. Osterman's October 4, 2013 report is of limited probative value concerning appellant's claim for an April 30, 2013 employment injury because he did not provide

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<sup>14</sup> The record includes a report of May 11, 2016 x-rays of appellant's left foot with an impression of "normal left foot."

<sup>15</sup> See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>16</sup> *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

<sup>17</sup> Such medical rationale is especially necessary in the present case because the left foot swelling/cyst condition reported by appellant did not manifest itself until approximately three years after the accepted April 30, 2013 employment incident. Appellant also submitted a June 23, 2016 report from Dr. Labropoulos in which he provided brief findings from the left foot examination he conducted on that date. Dr. Labropoulos diagnosed extensor tenosynovitis and possible midfoot arthritis (not visible on recent x-rays). However, this report is of no probative value on the underlying issue of this case because Dr. Labropoulos did not provide an opinion on the diagnosed conditions. See *supra* note 13.

adequate medical rationale in support of his opinion on causal relationship.<sup>18</sup> Dr. Osterman did not explain the mechanism of how the April 30, 2013 employment incident could have caused injury to her left foot. Dr. Osterman's opinion on causal relationship appears to be primarily based on appellant's own reported belief about the cause of her left foot condition and he did not adequately explain how objective medical findings supported his opinion on causal relationship.<sup>19</sup>

In an August 25, 2017 report, Dr. Pizarro indicated that he had been treating appellant since June 7, 2017 and had been provided with medical records pertaining to her claimed 2013 foot injury.<sup>20</sup> He noted that his diagnosis was predicated upon the taking of a careful history of her injury and its etiology, and upon performing a meticulous physical examination to corroborate his diagnosis of "ganglion cyst secondary to trauma." Dr. Pizarro indicated that this evidence had "no controversion as to its veracity" and noted, "The history related, the immediate symptoms noted, the subsequent issues, medical treatment, and findings surrounding this injury and the now present cyst, lead me to conclude to a reasonable medical certainty that the injury of April 30, 2013 was the cause of [appellant's] current condition and impairment for her left foot."

The Board finds that Dr. Pizarro's report is of limited probative value in establishing appellant's claim for an April 30, 2013 employment injury because he did not provide adequate medical rationale in support of his opinion on causal relationship.<sup>21</sup> Dr. Pizarro did not describe the April 30, 2013 employment incident in any detail or explain how it could have caused a ganglion cyst as observed more than four years later in 2017. He noted that appellant provided evidence from Dr. Osterman containing a history of the April 30, 2013 injury and examination findings in close proximity to the date of injury, and he advised that there was evidence of immediate treatment for the April 30, 2013 injury and loss of work until May 6, 2013. However, Dr. Pizarro did not provide any discussion of this medical evidence or explain how it supported his ostensible opinion that she sustained a left foot injury due to the accepted April 30, 2013 employment incident. He advised that he had considered other means by which appellant's injury, in its present state, could have occurred, but he did not provide any discussion of what other causes for her left foot condition he had considered. For these reasons, Dr. Pizarro did not adequately explain his

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<sup>18</sup> See *supra* note 15.

<sup>19</sup> Dr. Osterman suggested that he treated appellant's left foot condition in 2013, but he did not provide any discussion of medical records from that period. Although he asserted that she had undergone many treatments over the prior three years, he did not describe the nature of such treatment or explain how it showed a work-related cause for her left foot condition.

<sup>20</sup> Dr. Pizarro advised that appellant reported that on April 30, 2013 her left foot was run over by a wheelchair that was exiting an elevator at work.

<sup>21</sup> *D.R.*, Docket No. 16-0528 (issued August 24, 2016) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining the relationship between a given employment activity and a diagnosed medical condition).

conclusion on causal relationship and therefore his report is of limited probative value regarding her claim for an April 30, 2013 employment injury.<sup>22</sup>

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 an injury due to the accepted April 30, 2013 employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 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

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<sup>22</sup> *C.M.*, Docket No. 14-0088 (issued April 18, 2014) (holding that 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).