United States Department of Labor
Employees' Compensation Appeals Board

J.L., Appellant	)	
and	)	**Docket No. 18-1804**
	)	**Issued: April 12, 2019**
U.S. POSTAL SERVICE, POST OFFICE, New York, 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 September 24, 2018 appellant filed a timely appeal from an August 8, 2018 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury causally related to the accepted May 30, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that on appeal, appellant submitted additional evidence. However, section 501.2(c)(1) of the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

FACTUAL HISTORY

On June 27, 2018 appellant, then a 67-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained an injury to his ankle as a result of being pushed by another employee while at work on May 30, 2018. He stopped work on that date.

By development letter dated July 5, 2018, OWCP acknowledged receipt of appellant's claim and informed him that additional evidence was needed in support of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

On July 11, 2018 OWCP received appellant's undated supplemental statement wherein he described in greater detail the altercation on May 30, 2018, as well as statements from witnesses to the incident. It also received letters from Bamidele Agada, a registered nurse, and Brownson Irondi, a nurse practitioner, dated May 30 and July 30, 2018, respectively. OWCP also received medical reports from Dr. Oluwafemi Odeyale, a treating podiatrist.

On July 9, 2018 the employing establishment controverted appellant's claim. P.B., a supervisor, commented that on the date of the incident appellant initiated physical contact with a coworker, who reacted by removing appellant from his person.

By decision dated August 8, 2018, OWCP accepted that the May 30, 2018 employment incident occurred as alleged, but denied appellant's claim, finding that he had not met his burden of proof to establish a diagnosed medical condition in connection with accepted factors of his federal employment. Thus, appellant did not meet the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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.[4] 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.[5]

In order to determine whether an employee sustained a traumatic 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

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

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

another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.[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 factors identified by the employee.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted May 30, 2018 employment incident.

In support of his claim, appellant submitted letters from Nurses Bamidele Agada and Brownson Irondi, dated May 30 and July 30, 2018, respectively, are of no probative value because nurses and nurse practitioners are not considered physicians as defined under FECA.[12]

Dr. Odeyale, a podiatrist, is a physician as defined under FECA.[13] However, his letter dated July 6, 2018 merely notes that appellant was unable to work certain days and provides a date

[6] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[7] *R.E.*, *id*.

[8] *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *J.P.*, *supra* note 4; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[12] *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) ("'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law"); *R.C.*, Docket No. 17-1314 (issued November 3, 2017).

[13] 5 U.S.C. § 8101(2).

when he could return to work. It gives no explanation as to why appellant was unable to work. Further, Dr. Odeyale's July 13, 2018 letter notes that appellant was unable to work "due to injury to his foot." This brief statement fails to establish a firm medical diagnosis and provides no causal support for an injury. Lacking a firm diagnosis and rationalized medical opinion regarding causal relationship, Dr. Odeyale's medical report is of no probative value.[14] His letters, therefore, are insufficient to establish fact of injury as they do not contain a rationalized medical opinion, based on a complete and accurate background, explaining how an employment incident physiologically caused a diagnosed condition.[15]

Because the medical reports of record do not adequately address how the May 30, 2018 employment incident caused a medical condition these reports are insufficient to establish entitlement under FECA.[16] Accordingly, appellant has not met his burden of proof to establish a traumatic injury claim.

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 his burden of proof to establish a traumatic injury causally related to the accepted May 30, 2018 employment incident.

[14] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *J.M.*, Docket No. 17-1002 (issued August 22, 2017).

[16] *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *see Linda I. Sprague*, 48 ECAB 386 (1997).

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 12, 2019
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