

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

---

<b>L.T., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1603</b>
	)	<b>Issued: February 21, 2019</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Oak Park, IL, Employer</b>	)	

---

*Appearances:*  
*Appellant, pro se*  
*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 August 20, 2018 appellant filed a timely appeal from an August 6, 2018 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 to consider the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that her right knee and left ankle conditions are causally related to the accepted April 14, 2018 employment incident.

---

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

<sup>2</sup> The Board notes that following the August 6, 2018 decision, OWCP received additional evidence. However, 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 additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On May 25, 2018 appellant, a 54-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 14, 2018, while in the performance of duty, she slipped on mud and fell to her knees injuring her right knee and left ankle. She stopped work on April 16, 2018.<sup>3</sup>

On April 16, 2018 appellant received treatment in an emergency department. A right knee x-ray taken that day revealed minimal osteoarthritis, but no evidence of a fracture or other findings to account for her reported pain. A left ankle x-ray revealed mild soft tissue swelling overlying the medial malleolus, with no evidence of fracture or misalignment. There was also evidence of plantar and calcaneal spurs, which were not clinically significant. An advanced practice nurse examined appellant for complaints of bilateral knee pain. Appellant reported that she had slipped and fell at work. She received a diagnosis of right knee injury and left ankle injury due to a fall. A nurse prescribed a topical anesthetic and a nonsteroidal anti-inflammatory drug, and discharged appellant with instructions to follow up with her primary care physician.

By development letter dated July 3, 2018, OWCP advised appellant of the need for additional factual information and medical evidence in support of her claim for FECA benefits. It specifically inquired about the circumstances of the alleged April 14, 2018 incident, and why appellant had delayed filing her Form CA-1. OWCP also requested that appellant provide a narrative report from her attending physician, which included a diagnosis and a medical explanation as to how the reported work incident either caused or aggravated a medical condition. It afforded appellant 30 days to submit the requested information. No further evidence was received.

By decision dated August 6, 2018, OWCP accepted that the April 14, 2018 employment incident occurred as alleged and that a medical condition had been diagnosed. It denied the claim, however, as causal relationship had not been established between the diagnosed condition(s) and the accepted April 14, 2018 employment incident.

## **LEGAL PRECEDENT**

A claimant seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.<sup>5</sup>

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.<sup>6</sup> Generally, fact of

---

<sup>3</sup> Appellant resigned effective April 19, 2018.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>6</sup> *T.H.*, 59 ECAB 388, 393-94 (2008).

injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury.<sup>8</sup> An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>9</sup>

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.<sup>10</sup> A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>11</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>12</sup>

Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.<sup>13</sup> Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her right knee and left ankle conditions are causally related to the accepted April 14, 2018 employment incident.

The April 16, 2018 emergency department treatment records prepared by a nurse are of no probative value as a nurse is not considered a physician as defined under FECA.<sup>15</sup> Therefore, the

---

<sup>7</sup> *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *J.L.*, Docket No. 18-0698 (issued November 5, 2018); *I.J.*, 59 ECAB 408 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>11</sup> *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

<sup>14</sup> *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence only if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1).

<sup>15</sup> *M.N.*, Docket No. 18-1193 (issued December 28, 2018); *supra* note 14.

emergency department treatment records are of no probative value and thus, are insufficient to meet appellant's burden of proof on causal relationship.

Appellant's April 16, 2018 right knee and left ankle x-rays are also insufficient to establish causal relationship. While the respective diagnostic studies included findings of minimal osteoarthritis, mild soft tissue swelling, and plantar and calcaneal spurs, the radiologist who interpreted the x-rays did not specifically address the cause of the reported findings. Diagnostic studies are of limited probative value as they do not address whether the employment incident caused any of the diagnosed conditions.<sup>16</sup>

The mere fact that a condition manifests itself or is discovered after an employment incident is insufficient to establish a causal relationship between the condition and the incident.<sup>17</sup> Temporal relationship alone will not suffice for purposes of establishing causal relationship.<sup>18</sup> Entitlement to FECA benefits may not be based on surmise, conjecture, speculation, or on the employee's own belief of a causal relationship.<sup>19</sup> Herein, the record lacks rationalized medical evidence establishing a causal relationship between the accepted April 14, 2018 employment incident and appellant's diagnosed conditions. Thus, appellant has not met her burden of proof.

Appellant may submit new evidence and/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 that her right knee and left ankle conditions are causally related to the accepted April 14, 2018 employment incident.

---

<sup>16</sup> See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

<sup>17</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2019  
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