

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

S.S., Appellant)	
)	
and)	Docket No. 18-1249
)	Issued: March 19, 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:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 4, 2018 appellant filed a timely appeal from a February 23, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 lower extremity condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 11, 2016 appellant, then a 30-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury while in the performance of duty due to factors of her federal employment, including walking, bending, pushing, pulling, going up and down stairs, and other duties as assigned. She indicated that she first realized her medical

¹ 5 U.S.C. § 8101 *et seq.*

condition was caused or aggravated by her federal employment on July 2, 2016. Appellant stopped work on July 2, 2016.

Appellant submitted a narrative statement dated June 2, 2016, in which she indicated that she had experienced pain numbness and a tingling sensation in the left leg. She noted difficulty going up and down and walking properly. Appellant stated that she did not feel capable of performing her duties and, every time she walked, the pain increased.

In a July 2, 2016 statement, J.R., a customer service supervisor, indicated that appellant called her that day around 12:30 p.m. on her personal telephone informing her that her leg was hurting her. She asked appellant if she had tripped or fell at work and she said, "No, I did not fall or trip." Appellant told her that "her leg hurt and she was struggling to complete her carry out." J.R. stated that once it was clear to her that appellant did not get hurt on the job, she informed her that she needed to provide administrative documentation for her abandoning her assignment.

In a July 6, 2016 statement, R.H. indicated that on Saturday, July 2, 2016 appellant returned back to the station at "13:97" saying she was unable to complete her assignment on Route 5 due to the fact that her leg was hurting her and she was having difficulty climbing stairs and walking. He noted that J.R. asked her if she fell or got hurt on the route to which appellant replied that she had not, just that her leg was hurting and she did not know why. R.H. requested that appellant provide a statement as to why she was unable to complete the route and she responded with a statement in which she indicated that her leg was hurting from the day before.

In a July 2, 2016 report from Dr. Paul Schmidt, a Board-certified emergency medicine physician, indicated that appellant was evaluated and recommended that she return to work in four days.

In a work excuse note dated August 3, 2016, a nurse practitioner indicated that appellant was seen in his office on August 1, 2016 and was unable to return to work until evaluated on August 11, 2016. He provided work restrictions of partial weight bearing of the left lower extremity.

In a work excuse note dated August 11, 2016, Dr. Thomas Hickernell, an orthopedic surgeon, indicated that appellant was seen in his office that day and diagnosed left tibial stress fracture. He provided work restrictions of nonweight bearing for at least two weeks and a reassessment in two weeks.

On September 1, 2016 Dr. Julian Sonnenfeld, an orthopedic surgeon, indicated that appellant had been seen at his clinic. He advised that appellant should be excused from work/school for the period of four weeks from September 1, 2016.

By development letter dated September 26, 2016, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries. It did not receive additional evidence.

By decision dated October 28, 2016, OWCP found that appellant had established fact of injury, but denied the claim because the medical evidence of record failed to establish causal relationship between her left tibial stress fracture and the accepted factors of her federal employment.

On March 16, 2017 appellant requested reconsideration and indicated that she would be submitting new medical evidence in support of her claim.

Appellant subsequently submitted a September 22, 2017 letter reiterating her request for reconsideration and a series of diagnostics testing results of the left knee dated August 1 and 6, and November 17, 2016, and January 5, 2017. The diagnostic testing revealed a “proximal medial tibial metaphyseal stress fracture” and “[f]aint residual sclerosis of the left proximal tibial metaphysis at the site of prior fracture.”

By decision dated February 23, 2018, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,² that an injury was sustained in the performance of duty as alleged, and that any disability or medical 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 upon a traumatic injury or an occupational disease.⁴ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.⁶ 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.⁷ Neither the mere fact that a disease or condition manifests itself during a period of employment,

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁵ *See D.R.*, Docket No. 09-1723 (issued May 20, 2010). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁷ *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left lower extremity condition causally related to the accepted factors of her federal employment.

Appellant submitted treatment notes from Dr. Schmidt and Dr. Sonnenfeld. However, these reports do not provide either a diagnosis of a medical condition or an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁹ Therefore, the reports of Dr. Schmidt and Dr. Sonnenfeld are insufficient to meet appellant's burden of proof to establish a left lower extremity condition causally related to the accepted factors of federal employment.

In a work excuse note dated August 11, 2016, Dr. Hickernell diagnosed left tibial stress fracture and provided work restrictions of nonweight bearing for at least two weeks. As noted above, the Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹⁰ Thus, this evidence is insufficient to establish appellant's claim.

Appellant also submitted evidence from a nurse practitioner. This report does not constitute competent medical evidence because a nurse practitioner is not considered a "physician" as defined under FECA.¹¹ Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹² Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.¹³ As such, her report is of no probative value and is found to be insufficient to establish appellant's claim.¹⁴

In support of her claim, appellant submitted various diagnostic reports. The diagnostics testing results of the left knee dated August 1, 2016 through January 5, 2017 confirmed the

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician's assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

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

¹³ *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 if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

¹⁴ See *K.C.*, Docket No. 16-1181 (issued July 26, 2017).

diagnosis of stress fracture and revealed faint residual sclerosis. The Board has held that diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.¹⁵ They are therefore insufficient to establish causal relationship.

As appellant has not submitted rationalized medical evidence to support her allegation that she sustained an injury causally related to the accepted employment factors, she has not met her burden of proof to establish her 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 her burden of proof to establish a left lower extremity condition causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 23, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 19, 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

¹⁵ See *J.S.*, Docket No. 17-1039 (issued October 6, 2017).