United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 18-1356**
	)	**Issued: May 21, 2019**
DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, Franklin, NY, Employer	)	

Appearances:
Stephanie N. Leet, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 2, 2018 appellant, through counsel, filed a timely appeal from a May 2, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal

[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.

Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has met her burden of proof to establish left shoulder, low back, head, right foot, and left thumb conditions causally related to the accepted April 22, 2014 employment incident.

FACTUAL HISTORY

On June 4, 2014 appellant, then a 51-year-old field representative, filed a traumatic injury claim (Form CA-1) alleging that on April 22, 2014 she fell down stairs and hit a bannister and wall while in the performance of duty. She indicated that she injured her left shoulder, low back, head, right foot, and left thumb. On the reverse side of the claim form, appellant's supervisor indicated that appellant was injured in performance of duty.

In a development letter dated June 23, 2014, OWCP informed appellant that additional factual and medical information was necessary to establish her claim. Appellant was also instructed to complete an attached questionnaire. OWCP afforded her 30 days to respond.

OWCP received a June 30, 2014 response to the development questionnaire. Appellant indicated that her claim was timely filed and explained the efforts she engaged in to notify her supervisors of her claimed April 22, 2014 fall. She indicated in her response that she had banged her head on the wall, twisted her right foot, bent her left thumb back, twisted her back, and hit her left shoulder. Appellant also stated that she bruised her right foot and left shoulder, had headaches and low back pain, and had limited use of her left hand. She denied any other injuries after her incident.

Appellant also provided OWCP with physical therapy records dated June 4 to 25, 2014, and nurses' notes dated June 26, 2014.

By decision dated July 28, 2014, OWCP denied appellant's claim. It accepted that the April 22, 2014 employment incident occurred as alleged, but found that the medical evidence of record was insufficient to establish that a medical condition had been diagnosed as a result of the April 22, 2014 employment incident.

On August 15, 2014 appellant requested reconsideration.

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that appellant submitted additional evidence following the May 2, 2018 decision. 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.*

In support of her request, appellant submitted a May 29, 2014 report from Dr. Jennifer Wiley, a Board-certified family practitioner. Dr. Wiley noted that appellant presented for back pain after falling down stairs at work on April 22, 2014. She indicated that appellant was 100 percent disabled and provided documentation which included x-rays that had been taken of the left knee.

A May 29, 2014 lumbar spine x-ray, read by Dr. Sundar Jayaraman, a Board-certified diagnostic radiologist, noted a prior history of low back pain, and compared her x-ray to radiographs taken on December 18, 2013. He found mild degenerative changes without significant disc space narrowing. OWCP also received physical therapy notes from July 2 to 31, 2014.

By decision dated August 22, 2014, OWCP denied modification of the July 28, 2014 decision, finding that the medical evidence of record was insufficient to establish a firm medical diagnosis, which could be attributed to the accepted April 22, 2014 employment incident.

On November 26, 2014 appellant requested reconsideration and submitted new medical evidence.

In an August 6, 2014 report, Dr. Wiley noted the history of back pain, which included that on April 22, 2014 appellant was descending a flight of stairs when her "leg gave out and she hit her back and twisted her back." She advised that appellant had been off work since June 2, 2014 and was undergoing physical therapy. Dr. Wiley also noted that appellant injured her shoulder when she fell and that she was feeling depressed from this episode. She diagnosed low back pain and shoulder pain and kept appellant off work.

In a separate report, also dated August 6, 2014, Dr. Wiley again diagnosed low back pain and shoulder pain. She explained that the "incident the patient described was not the competent medical cause of this injury/illness. The patient's complaints are not consistent with his/her history of the injury/illness. The patient's history of the injury/illness is not applicable." Dr. Wiley placed appellant off work.

In an August 21, 2014 progress note, Dr. Tally Lassiter, a Board-certified orthopedic surgeon, noted that appellant presented with left shoulder pain since falling at work on April 22, 2014. He related that appellant slipped on stairs and struck her posterior shoulder against the wall. Dr. Lassiter noted that he was only treating the shoulder condition. He diagnosed left shoulder contusion and degenerative arthritis of the shoulder.

An October 22, 2014 report from Dr. Bradley Hart, a podiatrist, noted that appellant fell down stairs at work on April 22, 2014. Dr. Hart related that appellant indicated that she was carrying a laptop and a 13-pound bag of supplies when she slipped and fell. He noted that she hit her head protecting the hardware she was holding, twisted her foot, and fell with her complete weight on her foot. Dr. Hart explained that appellant demonstrated the position of the foot as she landed, noting that she was "pigeon toed" and came down on the outside of her right foot. He also determined that appellant had significant low back pain. Dr. Hart diagnosed foot pain, closed fracture of the cuboid bone, and tendinitis of the foot.

In a report dated October 29, 2014, Dr. Wiley noted that appellant presented for back pain and a right foot fracture. She diagnosed lumbar intervertebral disc prolapse and fracture of the cuboid bone, closed. Dr. Wiley also saw appellant on November 18, 2014 and related that appellant landed on her right ankle, bounced her left shoulder and her head off the wall, wrenched her back, and injured her left thumb in a workplace incident. She explained that a magnetic resonance imaging (MRI) scan from October 20, 2014 revealed a right paracentral disc protrusion at L3-L4. Dr. Wiley assessed back and shoulder pain.

OWCP received a November 7, 2014 MRI scan of the right foot, read by Dr. Michael Cooley, which revealed edema and a subchondral cyst formation in cuboid at fifth tarsometatarsal joint. Dr. Cooley indicated that this could represent a post-traumatic degenerative change and/or resolving post-traumatic change, provided the history of cuboid fracture.

By decision dated February 24, 2015, OWCP affirmed the August 22, 2014 decision, as modified, finding that appellant had not established causal relationship between her accepted employment incident and a diagnosed medical condition.

On December 28, 2015 appellant requested reconsideration.

In support of her request, appellant submitted a March 10, 2015 report, wherein Dr. Wiley diagnosed closed fracture of the cuboid bone, shoulder contusion, and lumbar intervertebral disc protrusion. She explained that the "incident the patient described was the competent medical cause of this injury/illness. The patient's complaints are consistent with his/her history of the injury/illness. The patient's history of the injury/illness is consistent with my findings."

In a separate report, also dated March10, 2015, Dr. Wiley completed a doctor's progress note and checked the box marked "yes" in response to whether she believed the incident was the cause of the injury.

In a December 9, 2015 report, Dr. Lassiter indicated that appellant's left shoulder had been asymptomatic prior to her fall at work on April 22, 2014.

By decision dated March 8, 2016, OWCP denied modification of the February 24, 2015 decision.

On March 2, 2017 appellant, through counsel, requested reconsideration. Counsel argued that appellant had submitted relevant and pertinent new evidence sufficient to establish causal relationship.

In a June 16, 2015 report, Dr. R. Maxwell Alley, a Board-certified orthopedic surgeon, noted that appellant's history of injury and her complaints of right foot and left shoulder sensitivity. He related that appellant had issues with her left shoulder, the right foot, and low back. On physical examination Dr. Alley noted that her there is sensitivity predominately laterally about the foot and that she walked with a limp. He noted her left shoulder had mildly diminished range of motion with forward elevation to 160 degrees. Dr. Alley also indicated that radiographs revealed no displaced fracture of the cuboid and opined that her sensitivity "this long after the injury may be partly neurogenic."

OWCP received a July 30, 2015 electromyography (EMG) scan of the right lower extremity, but no physician interpreted the results of the testing.

By decision dated May 15, 2017, OWCP denied modification of the March 8, 2016 decision.

On February 1, 2018 appellant, through counsel, requested reconsideration and submitted new evidence.

A June 13, 2017 right ankle x-ray read by Dr. Edward Santelli, a Board-certified diagnostic radiologist, revealed normal bony mineralization and alignment without evidence of acute fracture, dislocation, or subluxation. Additionally, there was no discrete dislocation, normal soft tissues, and spurring from the calcaneus on the dorsal aspect.

In a June 13, 2017 report, Dr. Hart noted that he last saw appellant on December 16, 2014. He diagnosed traumatic arthritis, right foot cuboid fourth and fifth tarsometarsal joint. Dr. Hart opined that when appellant "went down she inverted her foot." He explained that this caused her foot to "take the brunt of the weight, which is not geared to take this much pressure with the foot in an inverted position and can further stress and strain the particular area of this foot." Dr. Hart opined that "due to the position and the fall, this has stressed and fractured the cuboid, which is essentially healed which created this traumatic arthritis in their respective area of the cuboid fourth and fifth tarsometatarsal joints noted on the x-ray." He also indicated that he would like to first review the computerized tomography (CT) scan and MRI scans so that he could, "formulate a finalized dialogue in regards to the cause and relationship of this fall and this persistent pain and discomfort based on the reasonable degree of medical certainty of which I have." Dr. Hart advised that he would follow up once the CT scan results were received and he would "formulate a dialogue finalized based on the literature and the dialogue in this letter that I have received."

A July 6, 2017 right foot CT scan report read by Dr. Andrew Goldschmidt, a Board-certified diagnostic radiologist, revealed a small "ununited" fragment from the distal lateral cuboid.

In a July 18, 2017 report, Dr. Hart diagnosed a nonhealing small bone fragment, right cuboid, post-traumatic arthritis, right fourth and fifth tarsometatarsal joint.

In an October 6, 2017 report, Dr. Hart noted that he first treated appellant on October 22, 2015. He related that she sustained a fall while at work on April 22, 2014, and had a twisting injury to the right foot. Dr. Hart explained that the position of the foot at the time of the fall was such that the outside of the right foot was lying on the ground and a direct blow occurred to the cuboid region. He advised that this caused the area of main pain and discomfort. Dr. Hart indicated that extensive diagnostic testing was conducted, the cuboid fracture was noticed, and correlated with the area of main concern and pain for appellant regarding the right foot. He opined that "within a reasonable degree of medical certainty, that her fall at work caused her foot to suffer cuboid fracture." Dr. Hart advised that the cuboid fracture was a direct and natural consequence that flowed from appellant's fall at work on April 22, 2014. He explained that it was not degenerative in nature, but caused by the trauma of the fall because of the position of the foot

during the injury. Dr. Hart diagnosed post-traumatic arthritis, right foot and ankle, and closed nondisplaced fracture of cuboid, right foot with nonunion, and subsequent encounter.

By decision dated May 2, 2018, OWCP denied modification of the May 15, 2017 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,[4] 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.[5] 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.[6]

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. Generally, fact of 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.[7] The second component is whether the employment incident caused a personal injury. An employee may establish that an incident 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.[8]

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the compensable employment factors.[10] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported

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

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

[6] *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).

[7] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[9] *E.J.*, Docket No. 18-0207 (issued July 13, 2018); *A.D.*, 58 ECAB 149 (2006).

[10] *L.C.*, *supra* note 3; *see J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2008).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[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 FECA benefits.[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish left shoulder, low back, head, and left thumb conditions causally related to the accepted April 22, 2014 employment incident. However, regarding appellant's right foot condition, the Board finds that the case is not in posture for decision.

Appellant claimed that her accepted April 22, 2014 employment incident resulted in left shoulder, low back, head, and left thumb conditions. The Board finds that she has not submitted sufficient medical evidence to establish causal relationship between her fall on the stairs at work and these additional medical conditions.

In support of her claim, appellant submitted a series of reports from her attending physician, Dr. Wiley. In reports dated May 29, October 29, and November 18, 2014, Dr. Wiley noted the history of an April 22, 2014 fall at work and noted physical examination findings. However, in these three reports, she did not provide an opinion as to whether appellant had sustained a diagnosed medical condition causally related to the accepted incident. 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.[14] These reports, therefore, are insufficient to establish appellant's claim.

In reports dated August 6, 2014, Dr. Wiley provided an opinion that appellant's employment incident was not the competent cause of her injuries as her complaints were found to be inconsistent with the history of injury. However, by report dated March 10, 2015, Dr. Wiley provided an opinion that after further diagnostic testing and consideration she opined that the diagnosed medical conditions were causally related to the accepted fall at work. Although Dr. Wiley ultimately provided an opinion which supported causal relationship, she did not provide any medical rationale in support of her opinion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining

[11] *P.R.*, Docket No. 18-0737 (issued November 2, 2018).

[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 2.805.3(a)(1) (January 2013).

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

how a given medical condition is related to an employment incident.[15] Therefore, these reports are also insufficient to establish appellant's claim.

In a separate report dated March 10, 2015, Dr. Wiley checked a box marked "yes" indicating that appellant's fall at work on April 22, 2014 was sufficient to cause the diagnosed medical conditions. The Board has held, however, that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, without explanation or rationale, that opinion has little probative value and is insufficient to establish a claim.[16]

The remaining medical reports from physicians include August 21 and December 9, 2015 reports by Dr. Lassiter and a June 16, 2015 report by Dr. Alley. While both physicians discuss appellant's left shoulder condition and complaints of pain, these reports do not contain an opinion on causation. As previously explained, a medical report which does not contain a physician's opinion on causation has no probative value and is insufficient to establish causal relationship.[17]

The Board notes that OWCP received reports from nurses and physical therapists. Those reports lack probative value as healthcare providers such as physician assistants, physical therapists, or nurse practitioners, are not considered physicians as defined under FECA.[18]

Finally, appellant submitted diagnostic testing reports in support of her claim. The Board has held that diagnostic reports lack probative value as they do not provide an opinion on causal relationship between appellant's employment duties and a diagnosed condition.[19]

Therefore the Board finds that the evidence of record is insufficient to establish left shoulder, low back, head, and left thumb conditions causally related to the accepted April 22, 2014 employment incident.

In support of her claim for a right foot condition appellant submitted a series of medical reports from Dr. Hart which were generally supportive and provided an opinion with respect to the cause of her right foot injury relative to her fall at work on April 22, 2014.

In an October 22, 2014 report, Dr. Hart indicated that appellant fell down stairs at work on April 22, 2014. He described the mechanism of injury, which included that she was carrying a laptop and a 13-pound bag of supplies when she slipped and fell. Dr. Hart also advised that she hit her head protecting the hardware she was holding, twisted her foot, and fell with her complete weight on her foot. He explained that appellant demonstrated the position of the foot as she landed,

[15] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[16] *See M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003).

[17] *Supra* note 14.

[18] *David P. Sawchuk*, 57 ECAB 316, 320 n.6 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA). *See also M.M.*, Docket No. 16-1617 (issued January 24, 2017).

[19] *See S.G.*, Docket No. 17-1054 (issued September 14, 2017).

noting that she was "pigeon toed" and came down on the outside of her right foot. Dr. Hart diagnosed foot pain, closed fracture of the cuboid bone, and tendonitis of the foot.

In his June 13, 2017 report, Dr. Hart diagnosed traumatic arthritis, right foot cuboid fourth and fifth tarsometatarsal joint. He explained how appellant injured her foot. Dr. Hart explained that appellant "inverted her foot" and this caused her foot to "take the brunt of the weight which is not geared to take this much pressure with the foot in an inverted position and can further stress and strain the particular area of this foot." He opined that "due to the position and the fall, this has stressed and fractured the cuboid which is essentially healed which created this traumatic arthritis." Dr. Hart further explained that in order to finalize his opinion, he wanted to review the CT scan and MRI scans and finalize his opinion as to the cause and relationship of the fall. In an October 6, 2017 report, he explained that she sustained an injury that was comprised of a twisting injury to the right foot noting that the position of the foot at the fall was such that the outside of the right foot was lying on the ground and a direct blow occurred to the cuboid region. Dr. Hart indicated that extensive diagnostic testing was conducted, the cuboid fracture was noticed and correlated with the area of main concern and pain for appellant regarding the right foot. He opined that "within a reasonable degree of medical certainty, that [appellant's] fall at work caused her foot to suffer cuboid fracture." Dr. Hart explained that the cuboid fracture was a direct and natural consequence that flowed from appellant's fall at work on April 22, 2014. He further explained that it was not degenerative in nature but caused by the trauma of the fall because of the position of the foot during the injury. Dr. Hart diagnosed post-traumatic arthritis, right foot and ankle and closed nondisplaced fracture of cuboid of the right foot with nonunion and subsequent encounters.

The Board finds that Dr. Hart's explanation is reasonably supportive and while his reports are not completely rationalized, they are consistent in indicating that appellant sustained a right foot injury causally related to the April 22, 2014 employment incident.[20] Although the medical reports of record are insufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between her condition and the work-related incident and are sufficient to require OWCP to further develop the medical evidence and the case record.[21]

Therefore, the Board will remand the case for further development of the medical evidence as it relates to appellant's diagnosed right foot conditions. On remand OWCP should prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether appellant's right foot injuries are causally related to the accepted April 22, 2014 employment incident, either directly or through aggravation, precipitation, or acceleration.[22] Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's right foot injury claim.

On appeal counsel repeated the arguments contained in her reconsideration request, that appellant had established causal relationship. The Board found that regarding the right foot that the case is not in posture and requires further development of the medical evidence. However, for

[20] *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

[21] *See D.C.*, Docket No. 18-1664 (issued April 1, 2019); *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

[22] *P.A.*, Docket No. 09-319 (issued November 23, 2009).

the reasons set forth above, the Board found that appellant has not met her burden of proof to establish that her left shoulder, low back, head, and left thumb conditions are causally related to the accepted April 22, 2014 employment incident.

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 left shoulder, low back, head, and left thumb conditions causally related to the accepted April 22, 2014 employment incident. The Board further finds that the case is not in posture for decision with regard to her right foot condition.

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part. The case is remanded for further development consistent with this decision of the Board.

Issued: May 21, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board