United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 19-1096**
	)	**Issued: November 12, 2019**
DEPARTMENT OF VETERANS AFFAIRS, BUFFALO VETERANS ADMINISTRATION MEDICAL CENTER, Buffalo, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 19, 2019 appellant filed a timely appeal from a March 18, 2019 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]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the March 18, 2019 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted January 29, 2019 employment incident.

FACTUAL HISTORY

On February 5, 2019 appellant, a 52-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that she injured her right ankle on January 29, 2019 when she stepped into a pothole in the employing establishment parking lot while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that she stopped work on February 1, 2019 and received medical treatment.

A February 5, 2019 right ankle x-ray revealed avulsion fractures by the medial malleolus. Dr. Jeffrey L. Lieberman, a radiologist, noted that one of the fractures appeared "old" and the other was of "uncertain age."

In a progress note dated February 6, 2019, an employee occupational health nurse practitioner, Chris D. Hull, indicated that on February 1, 2019, appellant presented stating that she fell on January 29, 2019 at about 2:05 p.m. in the employee parking lot, twisting her right ankle when leaving for the day. She was off work on January 30 and 31, 2019 resting, using ice, and elevating her leg. Appellant currently had the same pain level as the initial injury, and she was to follow up with her own primary care provider as she had a current ankle/foot issue for which she was already receiving treatment. An examination revealed a full, active range of motion with some discomfort with lateral and medial motion. Foot flexion and extension was demonstrated without difficulty or pain. The bilateral malleolus, both medial and lateral, had point tenderness. She was assessed with avulsion fractures closed/inferior and adjacent to the medial malleolus.

In a chart review note dated February 6, 2019, Brian E. Lucas, a physician assistant, indicated that his review of the x-rays revealed avulsion fractures, which appeared to be non-acute in nature. He wrote that it appeared appellant could be treated as an ankle sprain, which could take 8 to 12 weeks to fully improve.

In a February 11, 2019 development letter, OWCP requested that appellant submit additional evidence in support of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion, which inquired as to the circumstances of the injury, including details as to the nature and use of the parking lot. OWCP also requested that appellant provide a narrative report from her attending physician, to include a diagnosis and an explanation as to how the reported work incident either caused or aggravated a medical condition. By separate letter of even date, it also requested additional information from the employing establishment. OWCP afforded both appellant and the employing establishment 30 days to respond.

In a February 12, 2019 work restriction note, Mr. Hull indicated that appellant could not stand or walk more than 10 minutes at a time. If the employing establishment was unable to accommodate this restriction, Mr. Hull advised that she should be sent home.

By decision dated March 18, 2019, OWCP denied appellant's traumatic injury claim. While it accepted that the January 29, 2019 employment incident occurred as alleged, OWCP found that no valid diagnosis had been produced in connection with the accepted employment incident. Thus, appellant had not met the requirements for establishing an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing 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 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.[7] 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.[8] The second component is whether the employment incident caused a personal injury.[9] 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.[10]

Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be

[3] *Supra* note 1.

[4] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *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] *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[11] *E.M.*, *supra* note 7; *Robert G. Morris*, 48 ECAB 238 (1996).

based on a complete factual and medical background.[12] 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).[13]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury causally related to the accepted January 29, 2019 employment incident.

In his report of February 6, 2019, Brian Lucas, a physician assistant, diagnosed an ankle sprain. However, the medical component of fact of injury must be established by a medical report from a qualified physician who provides a valid diagnosis of a medical condition in connection to the January 29, 2019 employment incident.[14] OWCP received various treatment records authored by physician assistants and nurse practitioner. As these providers are not considered "physician[s]" as defined by FECA, their respective reports are insufficient for purposes of establishing entitlement to FECA benefits.[15]

Dr. Lieberman, did not mention any link whatsoever between the January 29, 2019 incident and the clinical findings of avulsion fractures that he observed on the x-rays of appellant's right ankle.[16] Therefore, his report does not establish that appellant sustained a condition connected to the accepted employment incident.[17]

Without medical evidence authored or countersigned by a qualified physician linking the accepted incident to a valid diagnosis,[18] the Board finds that appellant has not met her burden of

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[13] *Id.*

[14] *Y.N.*, Docket No. 14-0705 (issued July 2, 2014).

[15] 5 U.S.C. § 8101(2) provides that a physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. *See* 5 U.S.C. § 8102(2); *M.M.*, Docket No. 16-1617 (issued January 24, 2017); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as nurses, physician assistants, and physical therapists are not competent to render a medical opinion under FECA); *M.G.*, Docket No. 19-0918 (issued September 20, 2019 (nurse practitioners are not considered physicians under FECA; therefore, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits). *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).

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

[17] *L.T.*, Docket No. 18-1603 (issued February 21, 2019).

[18] 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).

proof to show that she sustained any medical condition as a result of the accepted January 29, 2019 employment incident.[19]

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 right ankle condition causally related to the accepted January 29, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 18, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

[19] *E.M.*, Docket No. 18-1599 (issued March 7, 2019).