United States Department of Labor
Employees' Compensation Appeals Board

L.P., Appellant	)	
and	)	**Docket No. 19-1812**
	)	**Issued: April 16, 2020**
DEPARTMENT OF VETERANS AFFAIRS, GARY AREA VETERANS CENTER, Crown Point, IN, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On August 28, 2019 appellant, through counsel, filed a timely appeal from a May 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted April 17, 2018 employment incident.

[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.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On May 2, 2018 appellant, then a 51-year-old administrator, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2018 she suffered injuries to her right hand, wrist, ankle, and left knee when she slipped and fell in an icy area of the parking lot. She did not stop work.

In an April 17, 2018 diagnostic report, Dr. Antonella Lostumbo, a Board-certified radiologist, performed an x-ray of appellant's right ankle and found no evidence of a recent fracture or dislocation. In a separate diagnostic report of even date, she performed an x-ray of appellant's right wrist and found mild degenerative disease with no recent fracture or dislocation.

In an April 30, 2018 medical note, Beverly Jordan, a registered nurse, examined appellant and documented pain in appellant's right foot and ankle.

In a partially redacted medical report of even date, Dr. Fida Bachour, Board-certified in internal medicine, noted that appellant slipped on ice at work on April 17, 2018 and injured her left knee and her right wrist and hand. She documented slight swelling and pain in appellant's left knee, as well as pain in her right hand. Appellant informed Dr. Bachour that she took three days off from work and that she did not want therapy or extra pain medication to treat her injuries.

In a June 6, 2018 progress note, Dr. Anand Shah, Board-certified in family medicine, indicated that appellant presented with swelling and pain in her left knee, as well as pain in her right foot, ankle, wrist, and hand after slipping at work on April 17, 2018. He diagnosed chronic pain of the left knee and right ankle, as well as right wrist pain and referred her to physical therapy.

In a development letter dated August 2, 2018, OWCP informed appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had therefore been authorized. However, a formal decision was now required. OWCP provided a factual questionnaire inquiring about the circumstances surrounding appellant's claimed injury for her completion and requested that she submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. It afforded her 30 days to respond. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the ownership of the parking lot in which appellant was injured. No additional evidence was received.

By decision dated October 26, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

On November 2, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

During the hearing held on March 11, 2019, appellant testified that she was seen at the employing establishment facility on the date of her injury and that she was diagnosed with sprains of her left knee and right ankle. The hearing representative explained that appellant would need a narrative report from appellant's treating physician providing this diagnosis with an explanation

of how her injury was causally related to her employment incident. He held the case record open for 30 days for the submission of additional evidence.

In a March 29, 2019 progress note, Dr. Bachour reported that appellant presented with a migraine headache. She also documented that, after four to five months and completion of physical therapy, appellant experienced no residual pain in her right ankle, right wrist, and left knee.

By decision dated May 28, 2019, OWCP's hearing representative affirmed the October 26, 2018 decision.

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 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 whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[7]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[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 incident identified by the claimant.[9]

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[3] *Id*.

[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] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[8] *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted April 17, 2018 employment incident.

In medical evidence dated April 30, 2018 and March 29, 2019, Dr. Bachour reported slight swelling and pain in appellant's left knee, as well as pain in her right wrist and hand after slipping on ice at work on April 17, 2018. She did not, however, provide a specific diagnosis of an injury or medical condition. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[10] Moreover, under FECA, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[11] As such, Dr. Bachour's medical evidence is insufficient to meet appellant's burden of proof.

Similarly, Dr. Anand's June 6, 2018 progress note diagnosed appellant with chronic pain of the left knee and right ankle, as well as right wrist pain. As stated previously, the assessment of pain is not considered a diagnosis, as pain merely refers to a symptom of an underlying condition.[12] Therefore, Dr. Anand's progress note is also insufficient to meet appellant's burden of proof.

Appellant also provided April 17, 2018 diagnostic reports from Dr. Lostumbo, in which she provided that x-rays of appellant's right ankle and wrist found no evidence of a recent fracture or dislocation, but noted mild degenerative disease of the right hand/wrist which was not determined to be associated with the alleged employment incident. Diagnostic studies lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused any of the diagnosed conditions.[13]

The remaining medical evidence consists of an April 30, 2018 medical note from a nurse, Mr. Jordan. However, the Board has held that certain healthcare providers such as nurses, physician assistants, physical therapists, and social workers are not considered physicians as defined under FECA.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[15]

[10] *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

[11] *M.V.*, Docket No. 18-0884 (issued December 28, 2018). The Board has consistently held that pain is a symptom, not a compensable medical diagnosis. *See P.S.*, Docket No. 12-1601 (issued January 2, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

[12] *Id*.

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

[14] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[15] *See M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

The Board finds that appellant has not submitted rationalized, probative medical evidence sufficient to establish a diagnosed medical condition causally related to her April 17, 2018 employment incident.[16] Appellant, therefore, has not met her burden of proof.

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 diagnosed medical condition causally related to the accepted April 17, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 16, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[16] *See T.J.*, Docket No. 18-1500 (issued May 1, 2019); *see D.S.*, Docket No. 18-0061 (issued May 29, 2018).