United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 19-1555**
	)	**Issued: February 24, 2020**
U.S. POSTAL SERVICE, SEWICKLEY POST OFFICE, Sewickley, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On July 15, 2019 appellant filed a timely appeal from an April 30, 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]

ISSUE

The issue is whether appellant has met his burden of proof to establish a right ankle condition causally related to the accepted March 23, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the April 30, 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.*

FACTUAL HISTORY

On March 23, 2019 appellant, then a 34-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day he reinjured his right ankle delivering mail while in the performance of duty. He explained that on December 2, 2018 he had sprained his right ankle while stepping off a porch.[3] In an accompanying narrative statement, appellant related that on March 23, 2019 he was walking his route while delivering mail when his right ankle began to throb and he experienced stabbing ankle pain. He placed a brace on the ankle and completed his route. Appellant's supervisor corroborated appellant's statements in a separate report. He also indicated on the reverse of the claim form that appellant was in the performance of duty when the claimed injury occurred. Appellant did not stop work.

In a March 23, 2019 report,[4] Dr. Justin Torok, a Board-certified diagnostic radiologist, reviewed anteroposterior, oblique, and lateral view x-rays of appellant's right ankle. He found that appellant's ankle mortise was congruent and that there was no evidence of acute fracture or dislocation. Dr. Torok further reported that there was no significant soft tissue abnormality or significant degenerative changes.

In a March 25, 2019 duty status report (Form CA-17), a nurse practitioner diagnosed right ankle sprain, but noted that there were "no objective findings." She indicated that the alleged injury occurred while walking on an old injury from December and that appellant was advised to resume work on March 25, 2019. In a March 25, 2019 report of work restrictions, the same nurse practitioner recommended that appellant only stand or walk with a brace on his ankle.

The employing establishment indicated in a March 26, 2019 return to work form (Form CA-3) that appellant returned to modified duty on March 25, 2019.

In a development letter dated March 28, 2019, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received reports related to appellant's claimed December 2, 2018 injury. In a December 7, 2018 report, Dr. Alex J. Kline, a Board-certified orthopedic surgeon, noted that appellant was evaluated for a right ankle injury which occurred several days prior when appellant twisted his ankle after stepping on a gravel driveway. He diagnosed a severe ankle sprain and recommended two weeks of protected weight bearing in a controlled ankle motion boot. In a December 18, 2018 follow-up report, Dr. Kline noted that appellant was progressing following his severe ankle sprain and recommended physical therapy. In a January 4, 2019 report, Kylie DiMichele, a physical therapist, detailed appellant's right ankle sprain treatment plan.

[3] Appellant previously filed a traumatic injury claim for the right ankle injury that allegedly occurred on December 2, 2018. OWCP assigned the claim OWCP File No.xxxxxx518, which has been accepted for a right ankle lateral ligament sprain.

[4] The record also contains a March 23, 2019 report from Heritage Valley Health System that is illegible.

On April 2, 2019 appellant responded to OWCP's development questionnaire. He explained that his injury occurred as he was delivering mail on foot. Appellant reported that, while walking from house to house through a customer's yard, he stepped on or in something which caused his right ankle to turn and he experienced throbbing and stabbing pain.

In an April 9, 2019 report, Dr. Kline noted that he saw appellant for a follow-up appointment. He indicated that appellant was four months out from an ankle sprain and did "not remember any new distinct trauma." Dr. Kline reported that appellant was still having severe, intermittent pain, particularly when he had been up and walking. He noted that he would obtain a magnetic resonance imaging (MRI) scan of appellant's right ankle. In an April 9, 2019 work status update report, Dr. Kline indicated that appellant was released to return to full duty up to 9.5 hours per day, effective April 9, 2019.

By decision dated April 30, 2019, OWCP denied appellant's claim, finding that the medical evidence submitted was insufficient to establish causal relationship between appellant's right ankle condition and the accepted March 23, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] 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.[7] 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.[8]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.[9] The second component is whether the employment incident caused a personal injury.[10]

[5] *Supra* note 1.

[6] *S.P.*, Docket No. 19-0819 (issued January 10, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[7] *D.L.*, Docket No. 19-1053 (issued January 8, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[8] 20 C.F.R. § 10.115; *J.S.*, Docket No. 19-1356 (issued January 8, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[9] *D.L.*, *supra* note 7; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *J.S.*, *supra* note 8; *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[11] 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 claimant.[12] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.[13]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration, or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right ankle condition causally related to the accepted March 23, 2019 employment incident.

In an April 9, 2019 report, Dr. Kline noted that appellant was having severe, intermittent pain in his right ankle related to an ankle sprain that occurred four months prior. He indicated that appellant did "not remember any new distinct trauma." While Dr. Kline noted a diagnosis of right ankle sprain, he did not provide an opinion which explained the causal relationship between the diagnosed condition and the accepted March 23, 2019 employment 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.[15] Further, Dr. Kline failed to explain how the accepted March 23, 2019 employment incident aggravated a preexisting ankle condition. The Board has consistently held that a rationalized medical report is particularly necessary when there are preexisting conditions involving the same body part, and has required medical rationale differentiating between the effects of the alleged work-related condition and the preexisting condition in such cases.[16] Thus, the Board finds that Dr. Kline's report is insufficient to establish appellant's claim.

Appellant submitted additional reports dated December 7, and 18, 2018 from Dr. Kline who noted the history of appellant's December 2, 2018 injury. Dr. Kline has not established how these reports relate to the accepted March 23, 2019 employment incident. The Board has held that

[11] *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[12] *J.S.*, *supra* note 8; *Leslie C. Moore*, 52 ECAB 132 (2000).

[13] *A.W.*, Docket No. 19-1277 (issued January 3, 2020); *Gary L. Fowler*, 45 ECAB 365 (1994).

[14] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *N.C.*, Docket No. 19-1191 (issued December 19, 2019); *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

[15] *S.P.*, *supra* note 6.

[16] *J.S.*, *supra* note 8.

medical evidence which predates the date of a traumatic injury has no probative value on the issue of causal relationship of a current medical condition.[17] Accordingly, these reports are of no probative value.

OWCP also received March 25, 2019 reports by a nurse practitioner and a January 4, 2019 report by a physical therapist. The Board has held that medical reports by a nurse practitioner or physical therapist are of no probative value as such health care providers are not considered physicians as defined under FECA.[18] These reports are therefore insufficient to establish appellant's claim.

On March 23, 2019 OWCP also received an x-ray report. However, diagnostic studies, such as an x-ray, lack probative value as to the issue of causal relationship as they do not address whether the employment incident caused the diagnosed condition.[19]

As appellant has not submitted rationalized medical evidence explaining the causal relationship between his right ankle condition and the accepted March 23, 2019 employment incident, the Board finds that he has not met his 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 his burden of proof to establish a right ankle condition causally related to the accepted March 23, 2019 employment incident.

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

[18] Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). *See also David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *C.S.*, Docket No. 19-1279 (issued December 30, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

[19] *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *see J.S.*, Docket No. 17-1039 (issued October 6, 2017).

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 24, 2020
Washington, DC

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

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

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