United States Department of Labor
Employees' Compensation Appeals Board

M.S, Appellant	)	
and	)	**Docket No. 20-0437**
	)	**Issued: July 14, 2020**
DEPARTMENT OF THE NAVY, WASHINGTON NAVY YARD, Washington, DC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 18, 2019 appellant filed a timely appeal from a November 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] 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.

[1] The Board notes that, following the November 7, 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.*

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle sprain causally related to the accepted August 14, 2019 employment incident.

FACTUAL HISTORY

On August 26, 2019 appellant, then a 48-year-old financial management analyst, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 2019 she scarred her left elbow and right knee and twisted her left ankle and foot while in the performance of duty. She explained that she was walking down the ramp of the parking garage when she stepped on a rock with her left foot and lost her balance. Appellant indicated that she tried to catch herself as she fell forward by putting her weight on her right leg. She stopped work the same day.

In an August 14, 2019 medical report, Dr. Jericho Mel de Mata, an osteopath Board-certified in emergency medicine, diagnosed an ankle injury and sprain and left foot pain. He noted that an x-ray of appellant's foot did not show any broken bones in her foot or ankle. Dr. de Mata's treatment instructions explained that an ankle sprain can occur when you twist your ankle and the ligaments that support the ankle are stretched and torn. In a medical note of even date, he advised that appellant could return to work on August 17, 2019.

Dr. Leena Kosandal, Board-certified in family medicine, evaluated appellant for left ankle joint pain and left foot pain on August 20, 2019. She ordered a magnetic resonance imaging (MRI) scan of appellant's left ankle and foot for further evaluation. In a medical note of even date, Dr. Kosandal advised that appellant would be unable to work until August 23, 2019.

In an August 21, 2019 statement, appellant explained that on August 17, 2019[3] she stepped on a rock while walking in the parking garage and lost her balance. She fell forward and put her weight on her right leg in order to catch herself. Appellant explained that after the incident she went into the office and noticed her left foot and ankle were swollen when she sat down and removed her shoe. She further indicated that two of her coworkers recommended she go to the base physician and gave her ice to put on her foot. Appellant then e-mailed her supervisors before going to the physician's office on the base. Upon learning that there were no physicians on call in the office, appellant went to an urgent care office.

In an August 28, 2019 medical report, Dr. Mychelle Shegog, a Board-certified orthopedic surgeon, indicated that appellant presented with an ankle injury. She noted an August 14, 2019 date of injury, prescribed a controlled ankle motion (CAM) walker boot and referred her to physical therapy. Additionally, Dr. Shegog placed appellant on modified duty from August 28 to October 20, 2019.

[3] The Board notes that appellant's statement indicated the date of injury was August 17, 2019, but this appears to be a typographical error as she and her supervisor indicated August 14, 2019 as the date of injury on appellant's Form CA-1.

Dr. Shegog opined in a September 9, 2019 medical note that appellant was totally disabled and recommended that she work from home until October 3, 2019.

In a September 25, 2019 work capacity evaluation (Form OWCP-5c), Dr. Shegog checked a box marked "No" to indicate her belief that appellant was incapable of performing her usual job without restrictions and explained that she was unable to stand. She advised that appellant could work for eight hours a day while seated until October 21, 2019. In an attending physician's report (Form CA-20) of even date, Dr. Shegog diagnosed a left ankle sprain and checked a box marked "Yes" to indicate her belief that appellant's injury was caused or aggravated by her employment activity. She reasoned that appellant had no pain prior to her fall. In an October 3, 2019 work status report, Dr. Shegog placed appellant on modified duty at work and home through November 17, 2019.

In a development letter dated October 3, 2019, 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 advised appellant of the type of factual and medical evidence required to establish her traumatic injury claim and asked her to complete a questionnaire and provide further details regarding the circumstances of the claimed August 14, 2019 employment incident. It also requested a narrative medical report from her physician which provided the physician's rationalized medical explanation as to how the alleged employment incident caused her diagnosed condition.

In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's traumatic injury claim, including information concerning the parking garage where she was injured. It afforded both parties 30 days to respond.

In response, appellant submitted an August 14, 2019 diagnostic report in which Dr. Timothy Chen, a Board-certified diagnostic radiologist, performed an x-ray of appellant's left foot and found no acute osseous abnormality.

In an August 22, 2019 diagnostic report, Dr. Zachary Fisher, a Board-certified diagnostic radiologist, evaluated a left foot MRI scan and found very mild degenerative changes at the fifth tarsometatarsal joint.

Dr. Charles Hollcraft, a Board-certified diagnostic radiologist, evaluated a left ankle MRI scan in an August 26, 2019 diagnostic report. He recorded impressions of distal Achilles tendinopathy and slight partial interstitial tearing along with mild retrocalcaneal bursitis, mild tendinopathy of the peroneus longus tendon, mild degenerative changes, as well as a poorly defined anterior talofibular ligament which may be the consequence of an old sprain.

In progress notes dated September 23 and October 1, 2019, Rochelle Cordon, a physical therapy assistant, and Renee Archer, a physical therapist, provided progress notes for appellant's treatment for an ankle sprain, respectively.

In response to OWCP's questionnaire, C.D., appellant's supervisor, provided an October 9, 2019 statement in which he agreed that appellant was injured while in the employing

establishment's parking garage and provided additional information concerning her use of the parking garage.

In an October 10, 2019 statement in response to OWCP's questionnaire, appellant described her initial actions immediately after the claimed August 14, 2019 employment incident. She indicated that she experienced pain and swelling after her injury and that she had no prior injury or similar symptoms prior to the employment incident.

The employing establishment controverted appellant's traumatic injury claim in a letter dated October 22, 2019, contending that her claim should be denied because she had not established fact of injury. In a separate letter dated October 31, 2019, the employing establishment controverted her claim.

By decision dated November 7, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that her diagnosed condition was causally related to the accepted August 14, 2019 employment incident.

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 whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

[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] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background, 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.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle sprain causally related to the accepted August 14, 2019 employment incident.

On August 14, 2019 Dr. de Mata diagnosed an ankle injury and sprain and left foot pain. 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.[12] Without explaining how appellant's stepping on a rock caused or contributed to her injury, Dr. Mata's medical report is insufficient to establish appellant's burden of proof.

Dr. Shegog's September 25, 2019 Form CA-20, contained a diagnosis of left ankle sprain. She checked a box marked "Yes" to indicate her belief that appellant's injury was caused or aggravated by her employment activity and explained that appellant had no left ankle pain prior to her fall. The Board has held that a physician's opinion on causal relationship which consists of checking "Yes" to a form question, without explanation or rationale is of diminished probative value and is insufficient to establish a claim.[13] Additionally, an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.[14] For these reasons, Dr. Shegog's Form CA-20 is insufficient to meet appellant's burden of proof.

In Dr. Shegog's August 28, 2019 medical report, she noted that appellant presented with an ankle injury and listed April 14, 2019 as the date of injury. She provided work restrictions, prescribed a CAM boot and referred appellant to physical therapy. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.[15] The Board has also held that the term "injury" does not constitute a firm diagnosis.[16]

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019).

[13] *See J.R.*, Docket No. 18-1679 (issued May 6, 2019); *M.C.*, Docket No. 18-0361 (issued August 15, 2018); *Calvin E. King, Jr.*, 51 ECAB 394 (2000); *see also Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

[14] *M.B.*, Docket No. 19-0840 (issued October 2, 2019); *John F. Glynn*, 53 ECAB 562 (2002).

[15] *See A.R.*, Docket No. 19-1560 (issued March 2, 2020).

[16] *T.M.*, Docket No. 19-1283 (issued December 2, 2019).

Further, Dr. Shegog does not offer an opinion regarding the cause of appellant's condition.[17] For these reasons, her August 28, 2019 medical report is insufficient to meet appellant's burden of proof.

Dr. Shegog's remaining medical evidence consists of reports dated September 9 and October 3, 2019 and a September 25, 2019 Form OWCP-5c in which she recommended that appellant remain on limited duty through November 17, 2019. However, she provided no opinion on causal relationship. Likewise, in an August 20, 2019 medical report, Dr. Kosandal found that appellant was unable to work until August 23, 2019, but provided no opinion on the cause of her condition. As noted above, the Board has held that medical evidence lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.[18] For this reason, Dr. Shegog's remaining medical evidence and Dr. Kosandal's August 20, 2019 report are also insufficient to meet appellant's burden of proof.

Appellant submitted diagnostic reports dated from August 14 to 26, 2019. However, diagnostic studies, standing alone, lack probative value to the issue of causal relationship as they do not address whether the employment incident caused the diagnosed condition.[19] For this reason, the diagnostic reports are insufficient to meet appellant's burden of proof.

The evidence also consists of progress notes from Rochelle Cordon, a physical therapy assistant, and Renee Archer, a physical therapist. Certain healthcare providers such as physical therapists, nurses, physician assistants, and social workers are not considered physicians as defined under FECA.[20] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence establishing that she sustained a left ankle sprain causally related to the accepted August 14, 2019 employment incident, the Board finds that 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.

[17] *Supra* note 12.

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

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

[20] 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); *L.F.*, *supra* note 18 (a physical therapist is not considered a physician as defined under FECA).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left ankle sprain causally related to the accepted August 14, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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