United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 19-1092**
	)	**Issued: June 24, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Flint, MI, 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 April 19, 2019 appellant, through counsel, filed a timely appeal from a March 21, 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.

[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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted December 7, 2017 employment incident.

FACTUAL HISTORY

On December 7, 2017 appellant, then a 45-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her right ankle while in the performance of duty. She claimed that she sprained her right ankle when descending stairs, and she fell down on a walkway, landing on both knees. Appellant stopped work on the date of the claimed injury.

Appellant submitted a report dated December 7, 2017 from Dr. Michael G. Williams, Board-certified in emergency medicine, who noted that appellant complained of twisting her right ankle while descending stairs at work that day, causing her to fall and roll over onto her back. On physical examination of appellant's right lower extremity, he observed tenderness and soft tissue swelling at the right lateral ankle, as well as decreased range of motion (ROM) of the right ankle secondary to pain. An x-ray of the right ankle taken in the office revealed no acute fracture or dislocation. Dr. Williams diagnosed right ankle sprain of an unspecified ligament and administered a pain medication injection. In a duty status report (Form CA-17) of even date, he listed the date of injury as December 7, 2017, provided a diagnosis "due to injury" of right ankle sprain, and recommended work restrictions. In a patient discharge form of even date, Dr. Williams listed the date of injury as December 7, 2017, diagnosed right ankle sprain, and checked a box to indicate that the condition was work related. In a patient discharge form dated December 14, 2017, Dr. Williams diagnosed right ankle sprain and recommended work restrictions.

In a patient discharge form dated December 21, 2017, Brianne Frankini, a nurse practitioner, diagnosed right ankle sprain and recommended work restrictions. In an outpatient order form dated December 28, 2017, Joy Sandy, a nurse practitioner, reported examination findings of pain/swelling and decreased ROM of the right ankle. She diagnosed right ankle sprain. In two January 6, 2018 form reports, Ms. Frankini again diagnosed right ankle sprain and recommended work restrictions. On January 9, 2018 Jammie Pierson, a nurse practitioner, diagnosed right ankle sprain, and she detailed work restrictions and a medication regimen.

A January 18, 2018 magnetic resonance imaging (MRI) scan of appellant's right ankle contained an impression of partial tear of the anterior talofibular ligament, tear of the calcaneofibular ligament, bone bruise on the medial aspect of the talar body and neck, and joint effusion. In a Form CA-17 and a patient discharge form dated January 22, 2018, Ms. Sandy diagnosed right calcaneofibular ligament tear and partial tear of the anterior talofibular ligament. She also included examination notes of even date. Appellant submitted unsigned progress reports dated January 6, 9, 16, and 22, 2018.

In a development letter dated February 5, 2018, OWCP requested that appellant submit additional evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how the reported December 7, 2017 employment incident caused or aggravated

a medical condition. It provided a questionnaire for her completion requesting further details regarding the December 7, 2017 accident. OWCP afforded appellant 30 days to respond.

On February 12, 2018 appellant responded to OWCP's questionnaire, noting that on December 7, 2017 she came down stairs, twisted her right ankle inwardly, and heard a "pop." She was not able to bear weight and fell to the ground in pain, laying there for approximately 10 minutes. Appellant indicated that she hopped back to her truck and drove back to the office.

Appellant also submitted an attending physician's report (Form CA-20) dated February 12, 2018 from Dr. Williams who advised that appellant reported that she walked down stairs and injured her right ankle on December 7, 2017. Dr. Williams noted examination findings of tenderness and reduced ROM of the right ankle, and he diagnosed right ankle sprain.[3]

Also received were unsigned progress reports dated December 7, 14, 21, and 28, 2017. An unsigned injury treatment report dated February 21, 2017 summarized appellant's medical treatment visits between December 7, 2017 and January 22, 2018.

By decision dated March 9, 2018, OWCP accepted that appellant's December 7, 2017 employment incident of twisting her right ankle and falling on stairs occurred as alleged. However, it denied her claim finding that the medical evidence of record was insufficient to establish a right ankle condition causally related to the accepted December 7, 2017 employment incident.

On April 6, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant subsequently submitted an intake note dated December 7, 2017 in which Dr. Williams initially noted that she reported twisting her right ankle and falling down stairs that afternoon. Dr. Williams detailed examination findings and diagnosed right ankle sprain. In a progress note dated December 14, 2017, he also diagnosed right ankle sprain. In an attending physician's report dated February 12, 2018, Dr. Williams noted that appellant reported suffering an injury while walking down stairs at work on December 7, 2017. He diagnosed right ankle sprain and checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the employment activity.[4] In a Form CA-17 dated March 30, 2018, Dr. Williams diagnosed right ankle tear due to the injury, and recommended work restrictions.

In a work excuse note dated July 24, 2018, Dr. Susan Mosier-LaClair, a Board-certified orthopedic surgeon, indicated that appellant had undergone Brostrom repair surgery on July 10, 2018 for right ankle instability. She advised that appellant was unable to work during her postoperative recovery and rehabilitation. Dr. Mosier-LaClair indicated that the first recommended off-work day for appellant was July 10, 2018 and the estimated date of return to work was October 15, 2018.

[3] On examination of the right ankle, Dr. Williams observed edema, reduced ROM, and sinus tarsi syndrome. He found that appellant had been partially disabled since December 7, 2017.

[4] This February 12, 2018 Form CA-20 contained content similar to that of a previously submitted February 12, 2018 Form CA-20, but the previously submitted version did not contain a checkmark relating to causal relationship.

Appellant also submitted additional progress notes, including December 21, 2017, January 6 and 16, 2018 notes from Ms. Frankini, a December 28, 2017 note from Ms. Sandy, and a January 9, 2018 note from Ms. Pierson. An unsigned injury treatment report dated May 1, 2018 summarized appellant's medical treatment visits between December 7, 2017 and January 22, 2018.

By decision dated July 30, 2018, OWCP's hearing representative affirmed the March 9, 2018 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed right ankle conditions and the accepted December 7, 2017 employment incident.

On January 4, 2019 appellant, through counsel, requested reconsideration of the July 30, 2018 decision.

Appellant submitted an October 4, 2018 report from Dr. Mosier-LaClair who noted that appellant reported that she sustained an injury at work on December 7, 2017. Dr. Mosier-LaClair indicated that appellant advised that she fell when she came down stairs and sprained her right ankle. Appellant reported that she heard a "pop" and was unable to bear her weight, causing her to fall to the ground. Dr. Mosier-LaClair noted that she first examined appellant on June 13, 2018 and found decreased ROM over the right ankle with dorsiflexion of neutral to 5 degrees and plantar flexion to 50 degrees. She observed right hindfoot ROM at approximately 80 percent with tenderness over the lateral ankle ligaments, soft tissue swelling, effusion of the ankle joint, a positive anterior drawer test, and a positive inversion test for instability. Dr. Mosier-LaClair noted that an MRI scan of the right ankle which she ordered demonstrated ankle synovitis with a tear of the lateral ankle ligaments, avulsion fracture of the fibula, and peroneal tenosynovitis.[5] She advised that on July 10, 2018, appellant underwent right ankle surgery consisting of a modified Brostrom repair of the lateral ankle ligaments for instability and excision of the nonunion of her fibular avulsion fracture with a peroneal tenosynovectomy.

Dr. Mosier-LaClair further noted in her report that she conducted an examination on October 4, 2018. She reported ROM findings for appellant's right ankle, noting dorsiflexion to neutral and plantar flexion to 50 degrees. Appellant's right hindfoot ROM was at 80 percent and she had minor pain and swelling over the lateral ankle ligaments and peroneal tendon sheath. Dr. Mosier-LaClair opined that appellant's right ankle pain, swelling, instability, peroneal tendinitis, and fibular avulsion fracture were "100 percent from her work-related injury on December 7, 2017 when she fell while at work…." She indicated that appellant's physical examination at the time she initially assessed her condition, as well as the MRI scan of the right ankle, "100 percent confirmed her ankle sprain with a tear of the ankle ligaments and swelling of the joint, as well as peroneal tenosynovitis…." Dr. Mosier-LaClair advised that appellant's disability from this work-related injury commenced on December 7, 2017 and would last through November 5, 2018.

Appellant also submitted a December 7, 2017 report from Dr. Williams who referenced appellant's fall and noted tenderness and decreased ROM of the right ankle. Dr. Williams diagnosed sprain of calcaneofibular ligament of the left ankle and sprain of tibiofibular ligament of an unspecified ankle. The findings of a December 7, 2017 x-ray of the right ankle contained an

[5] The case record does not contain a report of the MRI scan ordered by Dr. Mosier-LaClair.

impression of no acute process. An unsigned injury treatment report dated August 29, 2018 summarized appellant's medical treatment visits between December 7, 2017 and January 22, 2018.

By decision dated March 21, 2019, OWCP denied modification of the July 30, 2018 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,[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]

Rationalized medical opinion evidence is required to establish causal relationship. 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 incident.[11] 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.[12]

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

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

[8] *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).

[9] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[12] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right ankle condition causally related to the accepted December 7, 2017 employment incident.

Appellant submitted an October 4, 2018 report from Dr. Mosier-LaClair who opined that appellant's ankle pain, swelling, instability, peroneal tendinitis, and fibular avulsion fracture were "100 percent from her work-related injury on December 7, 2017 when she fell while at work…." Dr. Mosier-LaClair indicated that both appellant's physical examination results at the time she initially examined her on June 13, 2018 and a right ankle MRI scan of unspecified date "100 percent confirmed" a right ankle sprain with a tear of the ankle ligaments and swelling of the joint, as well as peroneal tenosynovitis. While her October 4, 2018 report does discuss the accepted December 7, 2017 employment incident as a contributing factor to appellant's right ankle condition, the Board finds that the report is insufficient because it is conclusory in nature and does not explain the pathophysiologic mechanism by which the accepted employment incident caused, aggravated, or accelerated appellant's injuries.[13] The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.[14] As such, Dr. Mosier-LaClair's October 4, 2018 report is insufficient to establish appellant's claim for an employment-related December 7, 2017 right ankle injury.[15]

In a work excuse note dated July 24, 2018, Dr. Mosier-LaClair indicated that appellant had undergone Brostrom right ankle repair surgery on July 10, 2018 and found that she had disability commencing the date of the surgery. However, this report is of no probative value with regard to appellant's claim for an employment-related right ankle injury because Dr. Mosier-LaClair did not provide an opinion relative to the causal relationship between the right ankle condition and the accepted employment incident. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[16]

In a patient discharge form dated December 7, 2017, Dr. Williams listed the date of injury as December 7, 2017, diagnosed right ankle sprain, and checked a box to indicate that the condition was work related. In an attending physician's report dated February 12, 2018, he noted that appellant reported suffering an injury while descending stairs at work on December 7, 2017. Dr. Williams diagnosed right ankle sprain and again checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the employment activity. Appellant's burden of proof includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.[17] Dr. Williams provided no rationale for his

[13] *See A.P.*, Docket No. 19-0224 (issued July 11, 2019).

[14] *L.G.*, Docket No. 19-0142 (issued August 8, 2019); *C.M.*, Docket No. 14-0088 (issued April 18, 2014).

[15] *See T.T.*, Docket No. 18-1054 (issued April 8, 2020); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

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

[17] *J.A.*, Docket No. 18-1586 (issued April 9, 2019); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

opinion on causal relationship in either report.[18] Furthermore, the Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of limited probative value and is insufficient to establish causal relationship.[19] As such, these reports are insufficient to discharge appellant's burden of proof.

In two December 7, 2017 narrative reports, Dr. Williams noted that appellant reported a December 7, 2017 fall at work and he diagnosed right ankle sprain.[20] In a duty status report of even date, he listed the date of injury as December 7, 2017, and provided a diagnosis due to injury of right ankle sprain. In a patient discharge report and a progress note, both dated December 14, 2017, Dr. Williams diagnosed right ankle sprain. In a February 12, 2018 attending physician's report, he diagnosed right ankle sprain and, in a March 30, 2018 duty status report, he provided a diagnosis due to injury of right ankle tear. The Board finds, however, that these reports are of no probative value regarding the underlying issue of this case because Dr. Williams did not provide an opinion that the December 7, 2017 fall caused or contributed to the diagnosed right ankle conditions. As noted above, 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.[21] As such, these reports are insufficient to establish appellant's claim.

Appellant submitted reports from nurse practitioners in support of her claim. The Board has held that certain health care providers, such as nurses, physician assistants, and physical therapists, are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[22] Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof.

Appellant also submitted unsigned progress reports. In addition, the case record contains unsigned injury treatment reports dated February 21, 2017, and May 1 and August 29, 2018 which summarized appellant's medical treatment visits between December 7, 2017 and January 22, 2018. The Board has held that a report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2) and reports lacking proper identification do not constitute probative medical evidence.[23]

[18] *Supra* note 16

[19] *Supra* note 17.

[20] In another December 7, 2017 report, Dr. Williams diagnosed sprain of calcaneofibular ligament of the left ankle and sprain of tibiofibular ligament of an unspecified ankle. His diagnosis of a left ankle condition appears to have been inadvertent as he only reported deficiencies upon physical examination for the right ankle.

[21] *See supra* note 16.

[22] *See M.M.*, Docket No. 17-1641 (issued February 15, 2018); *K.J.*, Docket No. 16-1805 (issued February 23, 2018); *P.S.*, Docket No. 17-0598 (issued June 23, 2017); *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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

[23] *See C.B.*, Docket No. 09-2027 (issued May 12, 2010).

Therefore, these documents are of no probative value regarding appellant's claim for an employment-related December 7, 2017 right ankle injury.

The case record also includes diagnostic reports dated December 7, 2017 and January 18, 2018. Diagnostic testing reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion regarding the cause of the diagnosed conditions and these reports also have no probative value on the underlying issue of the case.[24]

The Board finds that, because appellant has not submitted medical evidence providing a rationalized medical opinion that a diagnosed right ankle condition is causally related to the accepted December 7, 2017 employment incident, 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right ankle condition causally related to the accepted December 7, 2017 employment incident.

[24] *See Z.G.*, Docket No. 19-0967 (issued October 21, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 21, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 24, 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