

**United States Department of Labor
Employees' Compensation Appeals Board**

S.H., Appellant)	
)	
and)	Docket No. 20-0113
)	Issued: June 24, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Oklahoma City, OK, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 17, 2019 appellant, through counsel, filed a timely appeal from a July 31, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the July 31, 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 medical condition causally related to the accepted February 21, 2019 employment incident.

FACTUAL HISTORY

On March 7, 2019 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2019 she sustained injuries to her right foot, including numbness, when a fellow carrier ran her cart of parcels into the back of her ankles while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted a work capacity evaluation (Form OWCP-5c) dated March 7, 2019 from Michelle Knott, a physician assistant, who diagnosed numbness of right foot due to a February 21, 2019 work injury. In a note dated March 7, 2019, Ms. Knott indicated that appellant was seen that same day and released her to work on March 11, 2019. On March 11, 2019 she advised that appellant should wear a walking boot until she is cleared by podiatry. Ms. Knott indicated that appellant had an impingement of a nerve that was causing numbness of the lateral aspect of her foot. She further noted that a decrease in the movement in the area of concern should resolve the inflammation and numbness.

In a narrative statement dated March 11, 2019, appellant reiterated that she had been struck in the back of her ankle by another carrier's cart full of packages and mail as they were pushing out the doors to go load. She indicated that the skin was scraped off of the right foot and she immediately reported the incident to her supervisor. Appellant asserted that her ankle was sore for a few days after the incident, followed by numbness, tingling, swelling, and bruising and that she went to see a doctor when it did not seem to be improving.

In a March 20, 2019 development letter, OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim. It provided a questionnaire for completion and afforded her 30 days to submit the necessary evidence.

In response, appellant submitted a hospital record dated March 7, 2019 from Ms. Knott diagnosing right foot pain.

By a letter dated April 3, 2019, the employing establishment controverted appellant's claim contending that the entire claim was "suspicious in nature" and it "appears" that appellant "was just trying to join her friends/coworkers in filing claims." It also noted that the medical evidence was not from a physician, but a physician assistant.

In a March 8, 2019 witness statement, S.E., appellant's coworker, recounted that on the date of the alleged incident she recalled a line of people exiting the door when appellant stopped in front of her, causing her to hit appellant with her cart. She noted that she had only tapped appellant and apologized thereafter. S.E. reported that appellant said nothing in response and they then went on their individual way to load up.

An April 3, 2019 report from an unidentifiable healthcare provider indicated that appellant had sustained a work injury on February 21, 2019 when a coworker hit her with a mail cart on the back of her right ankle.

By decision dated April 23, 2019, OWCP accepted that the February 21, 2019 employment incident had occurred as alleged, but found that the evidence of record had not established a diagnosed medical condition in connection to the accepted employment incident and, thus, the requirements had not been met to establish an injury as defined by FECA.

On May 2, 2019 appellant requested reconsideration of the April 23, 2019 decision.

OWCP received additional evidence. In a March 7, 2019 hospital report, Ms. Knott indicated that appellant was a postal worker and on February 21, 2019 she was struck in the bilateral posterior heels with a cart. She noted that initially, appellant only had a little pain, but had since experienced numbness in the lateral aspect of the right foot. Ms. Knott diagnosed numbness and pain of the right foot. A right foot x-ray report of even date, showed no significant radiographic abnormality.

In a May 8, 2019 return to work note, an unidentifiable healthcare provider diagnosed contusion injury to the lateral posterior aspect of the rear right foot, resulting in sural nerve damage and numbness, and released appellant to work effective May 13, 2019 with restrictions.

In reports dated April 17, 24, and May 15 and 30, 2019, Dr. Timothy J. Siegfried, a podiatrist, noted that appellant had presented with a contusion to the posterior aspect of the right ankle that she sustained while she was in her normal job capacity on February 21, 2019 just after 10:00 a.m. He related that she had been struck by a cart in the back of her lower leg and ankle quite abruptly. Dr. Siegfried diagnosed injury of cutaneous sensory nerve at ankle and foot level, neuralgia, contusion of foot, and foot pain. He concluded that appellant's post contusion to the posterior lateral aspect of the rear foot/ankle had resulted in isolated neuritis/neuralgia as of the sural nerve of the right foot and ankle.

By decision dated July 31, 2019, OWCP affirmed its prior April 23, 2019 decision, as modified. It found that the medical evidence of record had established a diagnosed medical condition, but was insufficient to establish a causal relationship to the accepted February 21, 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

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 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.⁷ The second component is whether the employment incident caused a personal injury.⁸

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.⁹

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting or animal bite).¹⁰ No medical report is required to establish a minor condition such as a laceration.¹¹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment-related contusion to the posterior aspect of the right ankle. The Board further finds, however, that she has not established that her additional claimed right foot conditions were causally related to the accepted February 21, 2019 employment incident.

In his reports, Dr. Siegfried noted that appellant presented with a contusion to the posterior aspect of the right ankle after being struck by a cart in the back of her lower leg and ankle quite abruptly while in the performance of duty on February 21, 2019. The Board finds that his history of the accepted February 21, 2019 employment incident was consistent with appellant's account, and his diagnosis of contusion to the posterior aspect of the right ankle was visible and consistent with the mechanism of injury. As such, the Board finds that this evidence is sufficient to establish that appellant sustained a contusion of the posterior aspect of the right ankle causally related to the

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

⁸ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011).

¹¹ *Id.*, see *I.H.*, Docket No. 19-1678 (issued April 21, 2020) (the Board accepted abrasions as causally related to the accepted employment incident).

accepted February 21, 2019 employment incident.¹² Upon return of the case record OWCP shall make payment and/or reimbursement of medical expenses and wage-loss compensation, if any, with regard to the accepted contusion to the posterior aspect of the right ankle.

The Board further finds, however, that the evidence of record is insufficient to establish that appellant's additional claimed right foot conditions were causally related to the accepted February 21, 2019 employment incident.

In his reports, Dr. Siegfried diagnosed injury of cutaneous sensory nerve at ankle and foot level, neuralgia, and contusion of foot. He opined that appellant's right foot/ankle injury had resulted in isolated neuritis/neuralgia as of the sural nerve of the right foot and ankle. However, these reports do not specifically address whether the February 21, 2019 employment incident either caused or contributed to her additional diagnosed conditions. As such, they are of no probative value and are insufficient to meet appellant's burden of proof.¹³

Appellant submitted notes from Ms. Knott, a physician assistant, in support of her claim. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.¹⁴ Consequently, their medical findings and/or opinions are of no probative value and will not suffice for purposes of establishing entitlement to compensation benefits.¹⁵

Appellant also submitted reports from unidentifiable healthcare providers. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁶ Moreover, as none of these healthcare providers adequately addressed causal relationship, their reports are insufficient to meet appellant's burden of proof.¹⁷

Finally, appellant submitted a March 7, 2019 x-ray report of the right foot, however, the study showed no significant radiographic abnormality and provided no firm diagnosis of a medical condition. The Board has held, that diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused a diagnosed medical condition.¹⁸ The Board finds, therefore, that this evidence is also insufficient to establish appellant's claim.

¹² *Supra* notes 10 and 11.

¹³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁴ Section 8101(2) of FECA provides that medical opinion, in general, can only be given by a qualified physician. This section 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. *See also B.J.*, Docket No. 18-1276 (issued February 4, 2019); *J.R.*, Docket No. 18-0801 (issued November 26, 2018).

¹⁵ *Id.*

¹⁶ *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

¹⁷ *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

¹⁸ *M.L.*, Docket No. 18-0153 (issued January 22, 2020).

As the evidence of record does not contain a rationalized opinion from a physician on causal relationship, the Board finds that appellant has not met her burden proof to establish additional right foot conditions in connection with the accepted February 21, 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 met her burden of proof to establish a contusion to the posterior aspect of the right ankle causally related to the accepted February 21, 2019 employment incident. The Board further finds, however, that she has not established additional right foot conditions causally related to the accepted February 21, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 31, 2019 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part.

Issued: June 24, 2020
Washington, DC

Alec J. Koromilas, 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

¹⁹ Y.K., Docket No. 18-1167 (issued April 2, 2020).