United States Department of Labor
Employees' Compensation Appeals Board

C.F., Appellant	)	
and	)	**Docket No. 19-1748**
	)	**Issued: March 27, 2020**
DEPARTMENT OF VETERANS AFFAIRS, G.V. (SONNY) MONTGOMERY VETERANS AFFAIRS MEDICAL CENTER, Jackson, MS, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August19, 2019 appellant, through counsel, filed a timely appeal from an April 26, 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 medical condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On February 9, 2018 appellant, then a 58-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained synovitis, tendinitis, plantar fasciitis, calcaneal spurs of the left foot, cervical spasms and aggravation of migraine headaches due to factors of her federal employment. She noted that she first became aware of her conditions and realized its relationship to her federal employment on November 30, 2017. Appellant explained that the repetitive motions of her ankles and feet from long periods of continuous walking and standing caused her injuries. She indicated that approximately 60 to 70 percent of her job duties and tasks require long periods of walking, standing, bending, and stooping. Appellant stopped work on November 30, 2017.

Appellant submitted a series of medical notes with illegible signatures dated from January 25 to February 8, 2018. The notes indicated that she was seen by podiatry treatments and would be able to return to work on February 12, 2018. A February 8, 2018 note provided a partially legible diagnosis of fasciitis and referred appellant to physical therapy for treatment.

In a development letter dated February 23, 2018, OWCP advised appellant of the factual and medical deficiencies of her claim. It informed her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion regarding the circumstances of the injury. OWCP also requested a narrative medical report from appellant's treating physician, which contained a detailed description of findings and diagnoses, explaining how her work activities caused, contributed to, or aggravated her medical conditions. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a December 14, 2017 medical restrictions statement with an illegible signature recommending multiple work restrictions and a referral to physical therapy. In a medical note of even date, Johanna Kimberl, a physician assistant, requested that appellant be excused from work from December 4 to 26, 2017.

Appellant submitted multiple medical notes with illegible signatures dated from January 3 to February 7, 2018, indicating that she would be able to return to work on February 8, 2018.

In a January 24, 2018 radiology report, Dr. Joe Jacobs, a Board-certified radiologist, performed an unspecified diagnostic examination on appellant's feet that revealed bilateral hammertoe deformities.

In a January 29, 2018 accommodation request determination, appellant requested clerical work in which she would not be required to continuously stand or walk for more than two hours combined per day. P.K., a designated management official, explained that the requested accommodation would not be effective because her position required potentially long periods of continuous walking, standing, stooping, sitting, bending, and pulling and pushing.

Appellant also provided multiple prescription receipts and notes dated February 23, 2018.

In a February 12, 2018 letter, the employing establishment controverted appellant's occupational disease claim, arguing that her work duties did not require repetitive motion or long periods of continuous walking, standing, bending, and stooping.

In a March 9, 2018 letter, appellant submitted a response to a letter regarding alternative accommodations. She explained that she requested work accommodations orally and written from her supervisor from January 5 to 26, 2018 and was denied. Appellant began working restricted duty on January 29, 2018, but asserted that the accommodation provided to her exceeded her limited-duty restrictions. She asserted that her treating health care professional indicated that the impact of the employing establishment's failure to accommodate her limited-duty restrictions might cause her disability to become aggravated. Appellant asserted that accommodation requests should have been more flexible and requested recovery in the form of compensation for lost wages, future earnings, and emotional pain and suffering among other damages.

By decision dated March 29, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted factors of her federal employment. It explained that she failed to submit a physician's opinion as to how her employment activities caused, contributed to or aggravated her work-related injury.

On May 1, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. She attached an April 30, 2018 letter in which she explained that a January 12, 2018 progress note signed by Dr. Selika Sweet, Board-certified in emergency medicine, supports that walking occurs during the performance of her duties and that she requested orthotic shoes and inserts due to her feet swelling at work. Appellant also advised that a new medical report Dr. James Phelan, a podiatric surgery specialist, would provide a more detailed description of his medical opinion. She concluded that the new evidence was sufficient to establish her claim.

In the April 19, 2018 narrative medical report, Dr. Phelan detailed appellant's history of severe pain, swelling, and cramping in both her feet and her belief that her symptoms were caused by working long hours on her feet with a great deal of walking. On examination, he diagnosed pes planus, plantar fasciitis, posterior tibial tendinitis, ankle swelling, and bilateral synovitis. Dr. Phelan reported that it was certainly possible that appellant's conditions were work related, but that it was also due to her biomechanics, foot structure, and pes planus. He opined that if she worked at a job that had minimal or little standing, walking, or lifting her condition probably would improve, but probably would never completely cease.

By decision dated May 25, 2018, OWCP denied appellant's request for an oral hearing as untimely filed.

On June 15, 2018 appellant requested reconsideration of OWCP's March 29, 2018 decision. She reiterated that the new evidence from Linda McCoy, a registered nurse and Dr. Phelan were sufficient to meet her burden of proof.

On August 15, 2018 OWCP received multiple statements and medical evidence regarding a June 22, 2018 employment incident in which appellant experienced an allergic reaction after being bitten by bugs while at work.

By decision dated August 24, 2018, OWCP denied modification of its previous decision, finding that appellant had not submitted sufficient medical evidence establishing a medical condition is causally related to the accepted work factors, as her physician did not provide a rationalized opinion on causal relationship.

On September 7, 2018 appellant requested reconsideration of OWCP's August 24, 2018 decision

By decision dated September 24, 2018, OWCP denied appellant's request for reconsideration.

OWCP continued to receive additional evidence. In a November 15, 2018 medical report, Dr. Phelan explained that appellant's conditions were "[t]o some extent; probably about 60 [to] 70 [percent] work related" and checked "yes" to indicate that her injuries and conditions were causally related to her work factors.

On January 30, 2019 appellant requested reconsideration of OWCP's September 24, 2018 decision.

By decision dated April 26, 2019, OWCP denied modification of its previous 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,[3] 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.[4] 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.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

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

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

[5] *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).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[7] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background.[8] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral foot and ankle conditions causally related to the accepted factors of her federal employment.

Dr. Phelan's April 19, 2018 narrative medical report indicated that it was "certainly possible" that appellant's bilateral foot and ankle conditions were work related, but that it was also due to her biomechanics, foot structure, and pes planus. He opined that if she worked at a job that had minimal or little standing, walking, or lifting her condition probably would improve, but probably would never completely cease. Although Dr. Phelan's opinion generally supported causal relationship between the accepted employment factors and appellant's diagnosed conditions, he did not provide sufficient rationale explaining these conclusions. Without explaining how the repetitive movements involved in her employment duties caused or contributed to her conditions, his opinion is of limited probative value.[10] As such, the Board finds that this report is insufficient to establish the claim.[11]

Similarly, in Dr. Phelan's November 15, 2018 medical report, he explained that appellant's conditions were "[t]o some extent; probably about 60 [to] 70 [percent] work related" and checked "yes" to indicate that her injuries were conditions that were causally related to the accepted work factors. The Board has held that his 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.[12] Additionally, Dr. Phelan's statement that appellant's conditions

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id*.; *Victor J. Woodhams*, *supra* note 6.

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

[11] *D.B.*, Docket No. 17-1845 (issued February 16, 2018); *T.H.*, Docket No. 14-0326 (issued February 5, 2015).

[12] *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).

were "probably about 60 [to] 70 [percent] work related" is speculative and equivocal, and thus insufficient to establish her burden of proof.[13]

Appellant provided multiple medical notes, containing illegible signatures, dated from January 3 to February 8, 2018 indicating that she was seen on various days for her symptoms. 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.[14] Further, a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[15] For these reasons, these medical notes are insufficient to establish appellant's burden of proof.

In Dr. Jacob's January 24, 2018 radiology report, he noted that an unspecified diagnostic examination was performed on appellant's feet that revealed bilateral hammertoe deformities. The Board has held that diagnostic tests lack probative value as they do not provide an opinion on causal relationship between her employment duties and the diagnosed conditions.[16] Accordingly, Dr. Jacob's radiology report is of no probative value regarding causal relationship.

Appellant also submitted a January 12, 2018 medical note from Nurse McCoy. Certain healthcare providers such as nurses, physician assistants, physical therapists, and social workers, however, are not considered physicians as defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[18]

On appeal appellant explained that the January 12, 2018 medical note was approved and signed by Dr. Sweet and that it served as evidence that supports that walking occurs during the performance of her duties which has caused her feet to swell. However, there is no evidence of record that confirms that Dr. Sweet signed the January 12, 2018 medical note. As stated previously, evidence that is unsigned cannot be considered probative medical evidence as the author cannot be identified as a physician.[19] Moreover, even if Dr. Sweet signed the medical note, it would still be insufficient as it does not offer an opinion regarding the cause of appellant's

[13] *Id*.

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

[15] *K.C.*, Docket No. 18-1330 (issued March 11, 2019).

[16] *See J.M.*, Docket No. 17-1688 (issued December 13, 2018).

[17] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[18] *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).

[19] *Supra* note 15.

condition.[20] For these reasons, the January 12, 2018 medical note is insufficient to meet appellant's burden of proof.

As there is no rationalized medical evidence of record explaining how appellant's employment duties caused or aggravated her conditions, the Board finds that she 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 bilateral foot and ankle conditions causally related to the accepted factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 27, 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

[20] *Supra* note 14.