United States Department of Labor
Employees' Compensation Appeals Board

D.S., Appellant	)	
and	)	**Docket No. 20-0641**
	)	**Issued: November 6, 2020**
U.S. POSTAL SERVICE, ABERDEEN POST OFFICE, Aberdeen, SD, 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 January 29, 2020 appellant, through counsel, filed a timely appeal from a November 12, 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 his burden of proof to establish a right leg condition causally related to the accepted June 16, 2018 employment incident.

FACTUAL HISTORY

On July 2, 2018 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2018 he developed an infection in his right lower leg from walking through water and mud on the floor of the employing establishment while in the performance of duty. He stopped work that day.

In a June 18, 2018 medical note, Lynn K. Meyers, a certified physician assistant, noted that appellant was seen in her clinic that day and placed appellant off work until June 20, 2018.

On June 20, 2018 Ms. Meyers noted that appellant was seen for cellulitis in his right leg that occurred on June 17, 2018 and required an emergency room visit on June 18, 2018. She held him off work until June 26, 2018. In a follow-up report dated June 25, 2018, Ms. Meyers indicated that appellant was seen for a recheck of cellulitis in the right lower extremity. She noted that the infection was improving, but that he should remain off work.

In a June 25, 2018 statement, appellant asserted that, when he arrived at work as usual on June 16, 2018, the building was flooded from the previous day. He indicated that he was told to carefully maneuver throughout the building as there was water and mud everywhere. Appellant was instructed to leave his long-life vehicle (LLV) outside and bring any mail into the backdoor. He explained that, when he woke up the next morning, he felt a burning sensation on his right leg. Later in the day, appellant developed severe chills and body ache and went to bed early. When he woke up the next morning he had a throbbing pain in his right leg and went to the emergency room to have it checked out. Appellant indicated that he was prescribed antibiotics for cellulitis.

In a June 25, 2018 letter, appellant's postmaster noted that he previously had an infection of one of his legs although she could not recall which leg or whether appellant had taken leave for this incident.

In a July 3, 2018 letter, the employing establishment controverted appellant's claim, asserting that he previously had a leg infection when he was a delivery supervisor. It further contended that it was most unlikely that he acquired strep C cellulitis and attached a photograph of the workplace at the time the alleged employment incident occurred.

In a July 9, 2018 development letter, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment resubmit a physical copy of the photograph of the workplace.

In a July 2, 2018 duty status report (Form CA-17), Ms. Meyers diagnosed cellulitis in the right lower leg. She also noted that appellant previously had a laceration on the right leg on May 27, 2018, but that it had healed.

By decision dated August 27, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a January 30, 2019 narrative report, Dr. Shirlene K. Smook, Board-certified in family practice, recounted appellant's history of injury and treatment from May 27 to July 2, 2018. She indicated that appellant was first seen in the emergency room on May 27, 2018 for a laceration that occurred at home and received stiches in his right leg. On June 5, 2018 appellant had his stiches removed and Dr. Smook observed that the laceration was healing well with no sign of infection. He subsequently returned to the emergency room on June 18, 2018 with redness and swelling in the right lower leg following flooding at the employing establishment. A culture was taken and on June 20, 2018 Dr. Smook determined that culture showed group C streptococcus. Appellant was started on medication and his condition improved. Dr. Smook released him to work without restriction on July 2, 2018. She opined that there was "a possibility that the flooded water in the [employing establishment] could have caused a secondary infection in the healing laceration on the right leg."

In an undated statement, appellant described his previous May 27, 2018 laceration that he sustained while at home. He explained that, immediately after receiving stiches in the emergency room, he went on vacation for a week, which helped with the healing process. Appellant reported that he returned to work on June 16, 2018 and that there was minimal water and mud throughout the employing establishment building. He indicated that he cased and successfully loaded his truck, which was surrounded by two to three inches of mud. Later in the afternoon, appellant was instructed by his manager not to enter the building and to distribute any incoming mail to a designated area by the rear employee entrance door.

Appellant alleged that on June 17, 2020 he woke up with a burning sensation at the wound site by his ankle. He explained that, by that afternoon, he developed worsening chills and body aches. The following morning, appellant woke with a fever and pain in his right leg. He noted that he had redness around a wound site and went to the emergency room for examination, which revealed streptococci cellulitis in the right leg. Appellant stopped work for three weeks and had periodic checkups while taking antibiotics. He asserted that the employing establishment was trying to silence him and that he disagreed with its assessment that it was unlikely for him to contract the infection at work.

On August 5, 2019 appellant requested reconsideration.

By decision dated November 12, 2019, OWCP modified its August 27, 2018 decision, finding that the June 16, 2018 employment incident occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted June 16, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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]

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.[10]

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[3] *Supra* note 2.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019) *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *K.G.*, Docket No. 18-1598 (issued January 7, 2020); *M.S.*, Docket No. 19-0913 (issued November 25, 2019).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right leg condition causally related to the accepted June 16, 2018 employment incident.

In support of his claim, appellant submitted a January 30, 2019 narrative report from Dr. Smook who diagnosed cellulitis of the right leg and opined that there was "a possibility that the flooded water in the [employing establishment] could have caused a secondary infection in the healing laceration on the right leg." The Board has held, however that medical opinions that are speculative and equivocal are of diminished probative value.[11] Moreover, Dr. Smook did not provide a pathophysiological explanation as to how walking in water and mud either caused or contributed to appellant's diagnosed condition.[12] As noted above, a well-rationalized opinion is particularly important when there is a preexisting condition involving the same body part.[13] The Board has required medical rationale differentiating between the effects of the work-related injury and the preexisting condition in such cases.[14] Lacking a rationalized explanation, Dr. Smook's January 30, 2019 report is insufficient to meet appellant's burden of proof.

Additionally, appellant submitted a series of medical notes dated from June 18 through 25, 2018 and a July 2, 2018 Form CA-17, all signed by Ms. Meyers, a certified physician assistant. However, certain healthcare providers such as physician assistants are not considered physicians as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As none of the medical evidence appellant submitted constitutes rationalized medical evidence sufficient to establish causal relationship between the accepted June 16, 2018 employment incident and his diagnosed cellulitis of the right leg, the Board finds that appellant has not met his burden of proof.

[11] *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

[12] *L.T.*, Docket No. 19-1100 (issued November 13, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *K.R.*, Docket No. 18-1388 (issued January 9, 2019).

[14] *See, e.g., A.J.*, Docket No. 18-1116 (issued January 23, 2019); *M.F.*, Docket No. 17-1973 (issued December 31, 2018); *J.B.*, Docket No. 17-1870 (issued April 11, 2018); *E.D.*, Docket No. 16-1854 (issued March 3, 2017); *P.O.*, Docket No. 14-1675 (issued December 3, 2015).

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA).

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 leg condition causally related to the accepted June 16, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the November 12, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 6, 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