

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

N.D., Appellant)	
)	
and)	Docket No. 20-0699
)	Issued: November 16, 2020
U.S. POSTAL SERVICE, FLINT MAIN POST OFFICE, Flint, MI, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 10, 2020 appellant, through counsel, filed a timely appeal from a December 17, 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.

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 lower extremity condition causally related to the accepted December 18, 2018 employment incident.

FACTUAL HISTORY

On May 16, 2019 appellant, then a 40-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that she sustained multiple injuries on December 18, 2018, including a radial meniscus tear, an anterior cruciate ligament (ACL) tear, and osteoarthritis when she stepped back and fell down steps when dropping packages off at a resident's house while in the performance of duty.

In an undated accompanying letter, appellant's supervisor, C.B., controverted appellant's claim. She asserted that on the day of the alleged injury, appellant returned from her assignment and left a note only with her temporary supervisor, D.H., indicating that she had hurt her ankle. C.B. indicated that D.H. instructed appellant to immediately seek medical assistance and report the incident, but appellant refused to seek medical attention. On May 16, 2019 appellant notified the employing establishment that she had previously injured herself while in the performance of duty and asserted that C.B. prevented her from getting medical assistance. C.B. alleged that appellant never directly reported the incident to her and asserted that she was not sure if the employment incident occurred as alleged.³

In a June 5, 2019 development letter, OWCP informed appellant of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. In a separate letter of even date, it requested additional information from the employing establishment. OWCP afforded both parties 30 days to submit the requested information.

OWCP subsequently received additional evidence. In a December 21, 2018 emergency department note, Dr. Sanford Ross, an emergency medicine specialist, noted that appellant reported falling down several stairs three days prior and complained of left knee, right ankle, and right wrist pain. He conducted a physical examination, which revealed no obvious gross deformity, and reviewed x-rays of appellant's left knee, right ankle, and right wrist, which demonstrated lateral soft tissue swelling in the right ankle. Dr. Ross diagnosed left knee, right ankle, and right wrist sprains.

Appellant submitted discharge instructions, dated April 26, 2019, which provided instructions for care for knee pain.

In an April 29, 2019 report, Nathan L. Arnold, a physician assistant, noted that appellant reported that her left knee began hurting prior to the fall in December 2018, but the employment incident seemed to exacerbate her pain. Appellant also reported another recent injury that she sustained when she was going from a squatted to a standing position. Mr. Arnold noted that intramuscular steroid injections had not provided much relief. On physical examination, he

³ A Notice of Personnel Action (Form SF-50) with an effective date of December 28, 2018 indicated that appellant had separated from the employing establishment as of that date.

observed moderate diffuse swelling in the left knee, which was worse over the suprapatellar area and tenderness with palpation over the medial and lateral joint lines. Mr. Arnold reported that x-rays of the left knee performed on the same day of his examination revealed medial joint space narrowing consistent with osteoarthritis. He diagnosed osteoarthritis and recommended a magnetic resonance imaging (MRI) scan to rule out a medial meniscus tear.

A May 11, 2019 left knee MRI scan demonstrated a probable medial meniscus tear with extrusion and moderate medial compartment osteoarthrosis, a chronic ACL tear with anterior tibial translation, moderate patellofemoral osteoarthrosis, effusion, and distention of the semimembranosus/tibial collateral ligament bursa.

In a May 29, 2019 medical note, Dr. Osman M. Saeed, Board-certified in internal medicine, noted that appellant was seen that day and excused her from work beginning April 29, 2019 until further notice.

By decision dated July 23, 2019, OWCP found that appellant had not submitted sufficient evidence to establish that the claimed December 18, 2018 employment incident had occurred at the time, place, and in the manner alleged. Thus, it denied her traumatic injury claim because she had not established the factual component of fact of injury.

On July 30, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. During the hearing, held on November 4, 2019, appellant reiterated her account of the alleged December 18, 2018 employment incident, noting that she stepped back and fell after dropping off a package on a porch. She alleged that she injured her knee, ankle, and wrist during this incident.

The hearing representative held the case record open for 30 days for additional evidence.

In an August 22, 2019 medical report, Dr. Matthew C. Sardelli, a Board-certified orthopedic surgeon, indicated that appellant sustained a twist and fall type of injury in December 2018 and had constant left knee and right ankle pain. He noted that appellant constantly woke from sleep at night and her pain was worsened with activities such as ascending and descending stairs, squatting down, and getting in and out of a car. Dr. Sardelli reported that appellant had been wearing a hinged knee sleeve for stability and physical therapy had not helped. He conducted a physical examination and reviewed the May 11, 2019 left knee MRI scan. Dr. Sardelli diagnosed right ankle Achilles tendinitis, a chronic left knee ACL tear, and left knee osteoarthritis. He explained that appellant's chronic ACL tear had led to secondary osteoarthritis. Dr. Sardelli concluded that appellant's conditions were work related.

In a November 22, 2019 letter, appellant's supervisor, C.B., asserted that she never had a meeting with appellant regarding the alleged December 18, 2018 employment incident.

By decision dated December 17, 2019, the hearing representative modified the prior decision finding that appellant had established that the December 18, 2018 employment incident had occurred as alleged and that the medical evidence of record established a diagnosed medical condition. However, the case was denied as the evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted December 18, 2018 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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 specific employment factors identified by the employee.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a lower extremity condition causally related to the accepted December 18, 2018 employment incident.

⁴ *Supra* note 2.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Dr. Saeed, in his May 29, 2019 note, excused appellant from work until further notice. However, he did not provide a specific diagnosis of an injury or medical condition or an opinion on causation. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹¹ As such, this medical note is insufficient to meet appellant's burden of proof.

In an August 22, 2019 report, Dr. Sardelli noted that appellant suffered a twist and fall type of injury at work in December 2018. He diagnosed right ankle Achilles tendinitis, a chronic left knee ACL tear, and left knee osteoarthritis. Dr. Sardelli opined that appellant's conditions were causally related to her work injury. While he provided an affirmative opinion which supported causal relationship, he did not provide a pathophysiological explanation as to how the accepted incident either caused or contributed to appellant's diagnosed conditions.¹² A mere conclusory opinion provided by a physician without the necessary rationale explaining how and why the incident was sufficient to result in the diagnosed medical condition is of limited probative value and insufficient to meet a claimant's burden of proof to establish a claim.¹³ Thus, the Board finds that Dr. Sardelli's report is insufficient to establish causal relationship.

On December 21, 2018 Dr. Ross noted that appellant's date of injury was December 18, 2018 and diagnosed left knee, right ankle, and right wrist sprains. However, he too did not explain how the accepted December 18, 2018 employment incident physiologically caused or aggravated appellant's diagnosed conditions.¹⁴ Therefore, Dr. Ross' report is also insufficient to establish appellant's claim.

Appellant also submitted an April 29, 2019 report by Mr. Arnold, a physician assistant, who diagnosed osteoarthritis. However, certain healthcare providers such as physician assistants are not considered physician[s] 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.

The record also contains diagnostic reports dated December 21, 2018 and May 11, 2019. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal

¹¹ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹² *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *T.M.*, Docket No. 19-1283 (issued December 2, 2019) *R.D.*, Docket No. 18-1551 (issued March 1, 2019).

¹³ *L.F.*, Docket No. 19-1905 (issued April 10, 2020); *J.O.*, Docket No. 19-0326 (issued July 16, 2019).

¹⁴ *D.M.*, Docket No. 19-1968 (issued August 28, 2020); *G.L.*, Docket No. 18-1057 (issued April 14, 2020).

¹⁵ 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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a physician as defined under FECA); *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). See also *R.R.*, Docket No. 20-0558 (issued August 31, 2020).

¹⁶ *D.F.*, Docket No. 19-0108 (issued April 16, 2019); *T.H.*, Docket No. 18-1736 (issued March 13, 2019).

relationship as they do not provide an opinion on whether the accepted incident caused the diagnosed conditions.¹⁷ These reports are therefore also insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence establishing that her medical conditions are causally related to the accepted December 18, 2018 employment incident, the Board finds that she has not met her burden of proof to establish his claim.

On appeal counsel argues that OWCP continues to confuse biomechanical causation with medical causation. However, as explained above, the Board finds that appellant has not met her burden of proof to establish a lower extremity condition causally related to the December 18, 2018 employment incident.

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 lower extremity condition causally related to the accepted December 18, 2018 employment incident.

¹⁷ *S.M.*, Docket No. 20-0241 (issued August 25, 2020); *K.S.*, Docket No. 19-1623 (issued March 19, 2020); *M.J.*, Docket No. 19-1287 (issued January 13, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board