United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 21-0016**
	)	**Issued: April 21, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Ithaca, NY, Employer	)	

Appearances:
Appellant, pro se
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 7, 2020 appellant filed a timely appeal from a September 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a right foot/toe condition causally related to the accepted June 20, 2020 employment incident.

FACTUAL HISTORY

On June 29, 2020 appellant, then a 31-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2020, as she was opening up a pallet, a heavy

[1] 5 U.S.C. § 8101 *et seq.*

package fell and hit her foot/toe. On the reverse side of the claim form her supervisor indicated that appellant was injured in the performance of duty. Appellant stopped work on June 20, 2020.

In support of her claim, appellant submitted a report dated June 20, 2020 from Jessica Price, a nurse practitioner. Ms. Price indicated that appellant related that a heavy box fell onto her right foot on June 20, 2020 and caused pain, swelling, and bruising to occur. She also noted that appellant started to develop some ecchymosis to the lateral aspect of the foot, the location of the pain, and that appellant denied any previous injury to her foot. Appellant was diagnosed with a nondisplaced unspecified fracture to her right lesser toe caused by a falling object.

Appellant submitted a form report dated June 20, 2020 completed by Ms. Price. Ms. Price indicated that a heavy box fell on appellant's right foot and she diagnosed a lateral fracture of the right toe, the fifth digit. She indicated that appellant should remain off work until June 24, 2020 and thereafter returned to sedentary work.

Appellant submitted an x-ray imaging report dated June 20, 2020 from Dr. Corey J. Weiner a Board-certified diagnostic radiology specialist. Dr. Weiner noted that appellant's right midfoot and hindfoot regions were intact. He diagnosed a subtle acute nondisplaced fracture at the base of the fused distal phalanx in the fifth digit of the right foot.

In a letter dated July 6, 2020, Susan Carlisle, a physician assistant, related that appellant was seen in the Guthrie clinic on July 6, 2020. She noted that appellant could return to work on July 8, 2020 for eight hours a day and that appellant must wear a supportive sneaker until further notice.

In a development letter dated July 30, 2020, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It requested that appellant provide a statement indicating which foot/toe was injured. OWCP also requested that appellant submit a narrative medical report from her attending physician, which includes the physician's opinion supported by a medical explanation as to how the reported employment incident caused or aggravated the claimed injury. It afforded appellant 30 days to submit the necessary evidence.

In response, appellant resubmitted documents dated June 20, 2020 from Ms. Price and Dr. Weiner.

OWCP also received a report dated August 19, 2020 from Ms. Carlisle, who indicated that appellant returned for a follow-up visit for fracture of her right fifth toe. Ms. Carlisle related that appellant had no swelling and a full range of motion with no pain. She concluded that appellant could return to work with no restrictions.

By decision dated September 4, 2020, OWCP accepted that the June 20, 2020 employment incident occurred, as alleged, but denied appellant's claim as causal relationship was not established between a diagnosed medical condition and the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 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 determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a 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.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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.[8]

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[2] *Id*.

[3] *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).

[4] *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).

[5] *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).

[6] *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).

[7] *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).

[8] *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).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right foot/toe condition causally related to the accepted June 20, 2020 employment incident.

Appellant submitted an x-ray report dated June 20, 2020 from Dr. Weiner in which he diagnosed her with a subtle acute nondisplaced fracture at the base of the fused distal phalanx in the fifth digit of the right foot. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.[9] For this reason, Dr. Weiner's report is insufficient to meet appellant's burden of proof.

Appellant submitted two reports dated June 20, 2020 in which Ms. Price, a nurse practitioner, indicated that appellant had related that a heavy box fell onto her right foot on June 20, 2020. Ms. Price noted that appellant was diagnosed with a nondisplaced unspecified fracture to her right lesser toe caused by a falling object. Certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.[10] Consequently, Ms. Price's reports will not suffice for purposes of establishing entitlement to FECA benefits.[11]

Appellant submitted a letter dated July 6, 2020 in which Ms. Carlisle, a physician assistant, related that appellant could return to work on July 8, 2020 for eight hours a day. She also submitted a report dated August 19, 2020 from Ms. Carlisle, which indicated that appellant returned for a follow-up visit for fracture of her right fifth toe. However, as noted above, physician assistants are not considered physicians as defined under FECA.[12] Consequently, Ms. Carlisle's letter and report will not suffice for purposes of establishing entitlement to FECA benefits.[13]

As there is no medical evidence of record establishing that appellant's diagnosed right toe fracture was causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted June 20, 2020 employment incident.

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[9] *See W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

[10] 5 U.S.C. § 8101(2) 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," 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *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).

[11] *See M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

[12] *Supra* note 10.

[13] *Supra* note 11.

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 foot/toe condition causally related to the June 2, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 21, 2021
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