United States Department of Labor
Employees' Compensation Appeals Board

A.M., Appellant	)	
and	)	**Docket No. 20-1575**
	)	**Issued: May 24, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, 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 August 7, 2020 appellant filed a timely appeal from a May 6, 2020 merit decision and a July 7, 2020 nonmerit 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.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a left ankle condition causally related to the accepted March 13, 2020 employment incident; and (2) whether

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the May 6, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On March 17, 2020 appellant, then a 28-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2020 she rolled her left ankle causing a sprain while in the performance of duty. She stopped work on March 14, 2020 and returned to work limited duty on March 31, 2020.

In a March 14, 2020 authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care. In Part B of the Form CA-16, attending physician's report, dated March 14, 2020, Dr. Alan Dias, Board-certified in emergency medicine, indicated that appellant rolled and injured her left ankle. Appellant was diagnosed with sprained left ankle. Dr. Dias checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity. He indicated that appellant was partially disabled from work from March 14 through 17, 2020, but could perform light work.[3]

In an April 6, 2020 development letter, OWCP advised appellant of the type of medical evidence necessary to establish a claim and attached a questionnaire for her completion. It afforded appellant 30 days to submit the requested evidence.

On March 24, 2020 appellant was treated by Jamie Whitesell, a physician assistant for a left ankle injury. She reported rolling her left ankle again on March 24, 2020 and falling down stairs. Appellant was previously treated on March 13, 2020 for the same type of injury and had a history of left ankle sprains and weakness since she was a child. Findings on examination revealed tenderness to palpation of the left knee and ankle, left ankle swelling, decreased strength, and abrasion of the left knee and shin. Ms. Whitesell diagnosed abrasion, left knee, initial encounter, and unspecified injury of the left ankle, subsequent encounter. Appellant was referred for physical therapy and taken off work until March 30, 2020.

OWCP received a workers' compensation status report from a nurse practitioner[4] dated March 30, 2020 who noted that appellant worked as a letter carrier. The nurse practitioner diagnosed left ankle sprain and prescribed anti-inflammatory medication and returned appellant to modified duty.

On March 30, 2020 Michael Ruppert, Jr., a physician assistant, treated appellant in follow up for a left ankle injury with an onset of 17 days. Appellant reported improving left lateral fibular pain. Examination revealed tenderness to palpation of the left ankle. Mr. Ruppert diagnosed sprain of the left ankle, and referred her to her primary care physician. He provided an ace wrap for compression and returned her to work with restrictions.

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[3] In an April 3, 2020 memorandum to the file, OWCP indicated that appellant filed a notice of recurrence (Form CA-2a) claiming disability under OWCP File No. xxxxxx810. It determined that the recurrence was actually a new injury and would be developed as a new case under OWCP File No. xxxxxx119. Appellant's claims have not been administratively combined and OWCP File No. xxxxxx119 is not presently before the Board.

[4] The signature is illegible.

On March 31, 2020 the employing establishment offered appellant a modified limited-duty job as a city carrier, effective March 31, 2020. Appellant accepted the position and returned to work.

By decision dated May 6, 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted March 13, 2020 employment incident.

In an undated statement, appellant indicated that on March 13, 2020 she was delivering mail on her route and rolled her ankle when she stepped onto a driveway. She reported finishing her mail route and informing her supervisor of the incident. Appellant reported for work on March 14, 2020 with left ankle pain and sought medical treatment at an urgent care facility. She was diagnosed with a left ankle sprain, provided crutches, and instructed to limit ankle usage for three days. Appellant reported that on March 24, 2020, while delivering mail she was descending steps when her left ankle rolled again causing her to fall down two to four brick steps onto a concrete landing. She reported the injury to her supervisor and sought treatment at the urgent care facility. Appellant was informed that this was a continuation of the original injury from March 13, 2020. She took a week off work and returned to modified duties. Appellant submitted copies of photographs of her legs.

On May 29, 2020 Dr. Dias diagnosed sprain of the left ankle, initial encounter. He treated appellant in follow up for a left ankle sprain. Dr. Dias noted an essentially normal physical examination and diagnosed sprain of unspecified ligament of the left ankle, subsequent encounter. Appellant was medically cleared to return to full duty without restrictions. In a workers' compensation status report of even date, Dr. Dias noted that appellant was a mail carrier and was diagnosed with a left ankle sprain. He cleared her for a return to her to regular duty without restrictions.

Appellant attended physical therapy treatments from April 20 through May 11, 2020.

In an appeal request form dated June 15, 2020 and postmarked June 16, 2020, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated July 7, 2020, OWCP denied appellant's request for a review of the written record as untimely filed, finding that her request was not made within 30 days of the May 6, 2020 OWCP decision as it was postmarked on June 16, 2020. It further exercised discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[5] 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

[5] *Supra* note 1.

limitation of FECA,[6] 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.[7] 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.[8]

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. 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, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence.[10] 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 incident identified by the employee.[11]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted March 13, 2020 employment incident.

In support of her claim, appellant submitted reports from a nurse practitioner, a physical therapist, and physician assistants. However, certain healthcare providers such as nurse practitioners,[12] physician assistants,[13] and physical therapists[14] are not considered "physician[s]"

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[6] *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).

[7] *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).

[8] *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).

[9] *T.J.,* Docket No. 19-0461 (issued August 11, 2020); *K.L*., Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *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).

[11] *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).

[12] *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[13] *C.P.,* Docket No. 19-1716 (issued March 11, 2020) (a physician assistant is not a physician as defined under FECA).

[14] *V.W.,* Docket No. 16-1444 (issued March 14, 2017) (where the Board found that physical therapy reports do not constitute competent medical evidence because a physical therapist is not a "physician" as defined under FECA).

as defined under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

OWCP also received Part B of Form CA-16, attending physician's report, dated March 14, 2020, from Dr. Dias, who indicated that appellant rolled and injured her left ankle. Dr. Dias diagnosed a sprained left ankle. He checked a box marked "Yes," indicating that the diagnosed conditions were caused or aggravated by the described employment activity. Dr. Dias further indicated that appellant was partially disabled from work from March 14 through 17, 2020, but could perform light work. The Board has held that when a physician's opinion on causal relationship consists only of checking "Yes" to a form question, without more by the way of medical rationale, that opinion is of little probative value and is insufficient to establish a causal relationship.[17] As such, this report does not establish appellant's claim.

On May 20, 2020 Dr. Dias diagnosed sprain of the left ankle and noted an essentially normal physical examination. In a workers' compensation status report of even date, he noted that appellant was diagnosed with a left ankle sprain and cleared her for a return to regular duty without restrictions. 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.[18] For this reason, Dr. Dias' medical reports are insufficient to meet appellant's burden of proof.

On appeal appellant asserts that she submitted sufficient medical evidence to establish that she sustained an injury causally related to the employment incident on March 13, 2020. As explained above, the evidence of record does not contain a physician's diagnosis of record with sufficient medical rationale to establish that appellant's left ankle condition was causally related to the accepted March 13, 2020 employment incident.

As the record lacks rationalized medical evidence establishing causal relationship between appellant's diagnosed left ankle sprain and the accepted March 13, 2020 employment incident, the Board finds that appellant 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.

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[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*); 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.L.*, Docket No. 19-0440 (issued July 8, 2019) (physical therapists); *T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioner).

[16] *Id.*

[17] *T.L.,* Docket No. 19-1467 (issued July 24, 2020); *S.K.,* Docket No. 19-0391 (issued December 13, 2019); *L.F.,* Docket No. 17-0689 (issued May 9, 2018); *Lee R. Haywood,* 48 ECAB 145 (1996).

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

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of FECA provides that "a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his [or her] claim before a representative of the Secretary."[19] Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.[20] A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.[21] Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.[22]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124.

OWCP's regulations provide that a request for review of the written record must be made within 30 days of the date of the decision for which a review is sought. Appellant's June 15, 2020 request for a review of the record was postmarked on June 16, 2020, more than 30 days after the issuance of OWCP's May 6, 2020 merit decision. Because the postmark date was more than 30 days after the date of OWCP's May 6, 2020 decision, the Board finds that the request was untimely filed and she was not entitled to a review of the written record as a matter of right.[23]

Although appellant's request for a review of the written record was untimely filed, OWCP has the discretionary authority to grant the request and it must exercise such discretion.[24] The Board finds that, in the July 7, 2020 decision, OWCP properly exercised discretion by determining that the issue in the case could be equally well addressed through a request for reconsideration before OWCP, along with the submission of additional evidence.

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[19] *Supra* note 1 at § 8124(b)(1).

[20] 20 C.F.R. §§ 10.616, 10.617.

[21] *Id.* at § 10.616(a).

[22] *W.H.,* Docket No. 20-0562 (issued August 6, 2020); *P.C.,* Docket No. 19-1003 (issued December 4, 2019); *M.G.,* Docket No. 17-1831 (issued February 6, 2018); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

[23] The 30-day period for determining the timeliness of an employee's request for an oral hearing or review commences the day after the issuance of OWCP's decision. *See Donna A. Christley*, 41 ECAB 90 (1989).

[24] *Supra* note 21.

The Board has held that the only limitation on OWCP's authority is reasonableness.[25] An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.[26] In this case, the evidence of record does not indicate that OWCP abused its discretion by denying appellant's request for a review of the written record. Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted March 13, 2020 employment incident. The Board further finds that OWCP properly denied her request for a review of the written record as untimely filed pursuant to 5 U.S.C. § 8124(b).[27]

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[25] *R.M.,* Docket No. 19-1088 (issued November 17, 2020). *See also E.S.,* Docket No. 18-1750 (issued March 11, 2019).

[26] *P.C., supra* note 22.

[27] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. 20 C.F.R. § 10.300(c); *J.G.,* Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the July 7 and May 6, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 24, 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