

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

_____)	
J.C., Appellant)	
)	
and)	Docket No. 21-0406
)	Issued: November 5, 2021
U.S. POSTAL SERVICE, GREENSBORO POST OFFICE, Greensboro, NC, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 28, 2021 appellant filed a timely appeal from a September 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a right lower extremity condition causally related to the accepted June 8, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 11, 2020 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On June 16, 2020 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2020 she broke her right foot in two places while stepping from a curb while in the performance of duty. On the reverse side of the claim form, D.M., the postmaster/officer-in-charge, confirmed that she was in the performance of duty when the incident occurred and that his knowledge of the facts about the injury were in agreement with her statements. Appellant stopped work on June 8, 2020.

In an after visit summary of even date, Dr. James Heaton, an emergency care physician, diagnosed a closed fracture of the distal end of the right fibula and a closed fracture of the right talus.

An x-ray report of the right ankle of even date, by a Dr. James A. Hunter, noted a history of lateral ankle pain, which appellant attributed to falling off a curb. The impression was acute ankle fracture of the distal fibula, lateral tissue swelling, and minimal talar break.

On June 11, 2020 appellant saw Dr. Jared Miller, an osteopath and Board-certified family and sports medicine specialist, who prescribed pain medication. In an after visit summary dated June 25, 2020, Dr. Miller diagnosed a closed fracture of the distal end of the right fibula with delayed healing and a sprain of the anterior talofibular ligament of the right ankle. In a letter dated July 16, 2020, he continued to recommend that appellant remain off work.

In an August 3, 2020 development letter, OWCP advised appellant of the deficiencies of her claim and requested that she provide a narrative medical report from a treating physician, explaining how the employment incident caused, contributed to, or aggravated her diagnosed medical condition. It afforded her 30 days to respond.

In an August 6, 2020 after visit summary, Dr. Miller noted an ongoing diagnosis of closed fracture of the distal end of the right fibula with routine healing.

By decision dated September 11, 2020, OWCP accepted that the June 8, 2020 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish that the diagnosed right lower extremity conditions were causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Supra* note 1.

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).

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. The first component is that 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.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 specific employment incident identified by the employee.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish lateral tissue swelling of the right ankle causally related to the accepted June 8, 2020 employment incident.

OWCP found that the June 8, 2020 employment incident, in which appellant fell while stepping off a curb, had occurred in the performance of duty, as alleged. In an x-ray report of the right ankle of even date, Dr. Hunter noted an acute fracture of the distal fibula, lateral tissue swelling, and a minimal talar break. OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted without a medical report.¹⁰ The Board therefore finds that appellant has met her burden of proof to establish lateral tissue swelling of the right

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 *P.C.*, Docket No. 20-0855 (issued November 23, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013). See also *R.H.*, Docket No. 20-1684 (issued August 27, 2021); *A.J.*, Docket No. 20-0484 (issued September 2, 2020) (the Board found appellant had met her burden of proof as the medical evidence established visible injuries in the form of ecchymosis and edema).

ankle.¹¹ The case shall be remanded for payment of medical costs and wage-loss compensation for disability, if any.

The Board further finds, however, that appellant has not met her burden of proof to establish an additional medical condition causally related to the accepted June 8, 2020 employment injury.

In hospital reports dated June 8, 2020, Dr. Heaton diagnosed a closed fracture of the distal end of the right fibula and right talus, but did not provide an opinion as to the cause of those conditions. Similarly, in visit summaries and letters dated June 11 and 25, July 16, and August 6, 2020, Dr. Miller provided diagnoses and recommended that appellant remain off work. However, he did not provide any opinion as to the cause of those conditions. 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.¹² Therefore, the reports of Drs. Heaton and Miller are insufficient to meet her burden of proof.

The x-rays of the right ankle dated June 8, 2020 noted diagnoses of acute nondisplaced fracture of the distal fibula and a minimal talar break. The Board has held that diagnostic reports, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the accepted employment incident caused a diagnosed condition.¹³ Consequently, these diagnostic reports are also insufficient to establish appellant's claim.

The Board therefore finds that appellant has submitted insufficient medical evidence to establish an additional medical condition causally related to the accepted June 8, 2020 employment injury.

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 met her burden of proof to establish lateral tissue swelling of the right ankle causally related to the accepted June 8, 2020 employment incident. The Board further finds, however, that she has not met her burden of proof to establish an additional medical condition causally related to the accepted June 8, 2020 employment injury.

¹¹ See *R.H., id.*; *A.J., id.*; see also *W.R.*, Docket No. 20-1101 (issued January 26, 2021); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

¹² *D.C.*, Docket No. 19-1093 (issued June 25, 2020); see *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *W.L.*, Docket No. 20-1589 (issued August 26, 2021); *A.P.*, Docket No. 18-1690 (issued December 12, 2019).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 5, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board