United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 20-1453**
	)	**Issued: January 5, 2022**
U.S. POSTAL SERVICE, B STATION CLEVELAND POST OFFICE, Cleveland, OH, 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 July 29, 2020 appellant, through counsel, filed a timely appeal from a July 9, 2020 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 to consider 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 left foot condition causally related to the accepted November 8, 2019 employment incident.

FACTUAL HISTORY

On November 9, 2019 appellant, then a 25-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that, on November 8, 2018, he sustained a left foot sprain while in the performance of duty. He noted that he felt sharp pain in his left foot while delivering mail.

Appellant was initially treated on November 8, 2018 in the emergency department by a registered nurse whose signature is illegible. The registered nurse excused appellant from work through November 10, 2019.

Appellant was also treated on November 8, 2019 by Whitney R. Butler, a certified physician assistant. Ms. Butler, in a November 8, 2019 after visit summary, diagnosed left foot pain.

In a November 15, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded appellant 30 days to respond.

A November 14, 2019 duty status report (Form CA-17) by Dr. Stephen Pinney, a Board-certified orthopedic surgeon, noted appellant's history of injury related to the alleged November 8, 2019 employment incident. He diagnosed left foot sprain, initial encounter. Dr. Pinney held appellant off work until December 9, 2019.

Ms. Butler, in a note dated November 8, 2019, related appellant's alleged history of injury and discussed findings on physical examination and reviewed diagnostic results. She reiterated her prior diagnosis of left foot pain.

A November 8, 2019 left foot x-ray report by Dr. Randy Larrick, a Board-certified diagnostic radiologist, reviewed appellant's alleged history of injury. Dr. Larrick provided an impression of no acute pathology.

A November 8, 2019 state workers' compensation first report of injury contained an illegible signature and noted a history of the alleged November 8, 2019 employment incident. Appellant was diagnosed as having left foot pain.

In progress notes and a report dated November 14 and December 5, 2019, Michelle Idada, a certified physician assistant, noted appellant's alleged history of injury on November 8, 2019 and discussed examination findings. She diagnosed: left foot sprain, initial encounter; left foot injury, initial encounter; and left foot pain.

In a November 14, 2019 progress note, Lauren Grady, a medical assistant, provided a primary diagnosis of left foot sprain, initial encounter.

In a December 5, 2019 Form CA-17 report, a provider with an illegible signature noted a history of the alleged November 8, 2019 employment incident. The provider diagnosed left foot sprain, initial encounter, due to injury and held appellant off work until December 15, 2019.

A left foot x-ray report of even date by Dr. Bradford Richmond, a Board-certified diagnostic radiologist, provided impressions of small bone exostosis on the dorsal aspect of the first metatarsal and small calcaneal enthesophyte, and otherwise normal bones and joints of the foot and ankle.

In a radiology service progress note also dated December 5, 2019, Sam E. Park, Jr., a technician, noted that appellant had undergone a general x-ray examination of his left ankle and foot.

By decision dated December 23, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish that his diagnosed left foot condition(s) were causally related to the accepted November 8, 2019 employment incident.

On January 9, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 11, 2020.

OWCP subsequently received medical evidence previously of record. It also received a new progress note dated January 16, 2020 by Ms. Idada wherein she reiterated a history of the accepted November 8, 2019 employment incident and her prior diagnosis of left foot sprain.

By decision dated July 9, 2020, OWCP's hearing representative affirmed the December 23, 2019 decision as modified to find that the medical evidence of record was insufficient to establish a medical diagnosis causally related to the November 8, 2019 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]

[3] *Id*.

[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).

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 and 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 specific employment factors identified by the employee.[9]

ANALYSIS

The Board further finds that appellant has not met his burden of proof to establish that his diagnosed left foot condition was causally related to the accepted November 8, 2019 employment incident.

On a November 14, 2019 Form CA-17, Dr. Pinney noted appellant's history of injury related to the alleged November 8, 2019 employment incident. He diagnosed left foot sprain, initial encounter. The Board thus finds that appellant has established a diagnosed medical condition. Dr. Pinney, however, did not provide an opinion on causal relationship between the diagnosed condition and the accepted employment incident. 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.[10] This report is, therefore, insufficient to establish appellant's claim.

Appellant also submitted a Form CA-17 report dated December 5, 2019 from a provider with an illegible signature. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[11] Therefore, this report has no probative value and is insufficient to establish the claim.

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[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] *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).

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

[11] *M.P.*, Docket No. 20-0996 (issued January 26, 2021); *T.U.*, Docket No. 19-1636 (issued October 29, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket

The diagnostic reports from Dr. Larrick and Dr. Richmond addressed x-rays of appellant's left foot. However, diagnostic studies, standing alone, lack probative value as they do not address whether the employment incident caused the diagnosed condition.[12]

The remaining medical evidence of record includes reports and/or progress notes from a registered nurse, certified physicians, a medical assistant, and a technician. The Board has held that such healthcare providers, are not considered physicians as defined under FECA.[13] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[14]

As appellant has established a diagnosed medical condition, but has not submitted rationalized medical evidence establishing a left foot condition causally related to the accepted November 8, 2019 employment incident, the Board finds that he has not met his burden of proof to establish his claim.[15]

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 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 that his diagnosed left foot condition was causally related to the accepted November 8, 2019 employment incident.

No. 19-1291 (issued December 11, 2019).

[12] *See B.H.*, Docket No. 20-0777 (issued October 21, 2020); *M.L.*, Docket No. 18-0153 (issued January 22, 2020); *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[13] Section 8101(2) of FECA provides that the term 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); 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, 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); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (registered nurse); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (physician assistant); *J.T.*, Docket No. 20-1486 (issued March 16, 2021) (medical assistant); *C.L.*, Docket No. 18-0363 (issued July 19, 2018) (technician).

[14] *J.D., id.*; *R.K., id.*; *J.T., id.*; *C.L., id.*; *David P. Sawchuk, id.*; Federal (FECA) Procedure Manual, *id.* at Chapter 2.805.3.a(1) (January 2013).

[15] *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *F.D.*, Docket No. 19-0932 (issued October 3, 2019); *D.N.*, Docket No. 19-0070 (issued May 10, 2019); *R.B.*, Docket No. 18-1327 (issued December 31, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 5, 2022
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