

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

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K.V., Appellant)	
)	
and)	Docket No. 22-0865
)	Issued: November 2, 2022
U.S. POSTAL SERVICE, KENILWORTH POST)	
OFFICE, Newark, NJ, Employer)	
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Appearances: *Case Submitted on the Record*
James Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 9, 2022 appellant, through counsel, filed a timely appeal from a March 30, 2022 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 left lower extremity condition causally related to the accepted November 21, 2020 employment incident.

FACTUAL HISTORY

On November 25, 2020 appellant, then a 27-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 21, 2020 she sustained a possible torn tendon of the left leg when she felt a “pop” in her calf while in the performance of duty.

In a note dated November 21, 2020, Dr. Joshua Hong, an emergency medicine specialist, stated that appellant was seen and treated on that date in the emergency department, and that she may return to work on November 28, 2020.

In a report dated December 3, 2020, Dr. Robin Innella, an osteopath specializing in orthopedic surgery, diagnosed spontaneous rupture of the flexor tendons of the left lower leg. He noted that the date of injury was November 21, 2020. On physical examination of the left lower leg, Dr. Innella observed posterior pain of the left calf with pain and tenderness in the area. On even date he also completed a work restriction form (Form OWCP-5c) wherein he recommended work restrictions. OWCP also received a December 21, 2020 work excuse note from Kristine Dizon, an administrator in Dr. Innella’s office, which indicated that appellant could return to sedentary work.

In a development letter dated December 22, 2020, OWCP advised appellant of the type of factual and medical evidence required to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

In a December 21, 2020 physical therapy order, Dr. Innella related appellant’s diagnosis as spontaneous rupture of left lower leg flexor tendons. OWCP also received a letter dated December 21, 2020 from Dr. Innella in which he related that appellant was seen for left calf pain, following an injury of November 21, 2020. Dr. Innella noted that appellant’s pain was aggravated when she walked or climbed stairs, and that she now also felt pain from her ankle to her knee. He diagnosed spontaneous rupture of the left lower leg flexor tendons. In a work excuse of even date, Dr. Innella indicated that appellant could return to light-duty work.

Appellant submitted reports from a physical therapist dated December 22, 2020 through January 13, 2021.

By decision dated January 25, 2021, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed spontaneous rupture of the flexor tendons of the left lower leg and the accepted November 21, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident.

Appellant continued to submit physical therapy notes from January 6 through 20, 2021.

In a report dated January 6, 2021, Dr. Innella noted a November 21, 2020 date of injury and diagnosed spontaneous rupture of the flexor tendons of the lower left leg. On physical examination of the lower left leg, he observed posterior pain of the left calf with pain and tenderness in the area. Dr. Innella recommended continued work restrictions.

On January 27, 2021 Dr. Innella followed up with appellant for her left calf pain. He noted that there was no longer tenderness and she had full range of motion. In a work excuse note dated January 29, 2021, Dr. Innella related that appellant could return to full-duty work.

In a report dated February 9, 2021, Dr. Innella followed up with appellant for her left calf pain. He noted that, after returning to work, she developed moderate pain in her calf. On physical examination of the left lower extremity, Dr. Innella observed full range of motion and medial tenderness to the mid-portion of the gastrocnemius.

On March 17, 2021 Dr. Innella followed up with appellant, noting subjective complaints of pain radiating from the right calf to the ankle. On physical examination of the left lower extremity, he observed normal findings.

On May 14, 2021 appellant, through counsel, requested reconsideration.

By decision dated June 8, 2021, OWCP reviewed the merits of appellant's claim, but denied modification of its January 25, 2021 decision.

On December 22, 2021 appellant, through counsel, again requested reconsideration. With the request, she submitted a December 15, 2021 report from Dr. Innella. Appellant told Dr. Innella that she initially injured her left calf on November 16, 2020 after loading her mail truck, and that on November 21, 2020 felt a "pop" in her left calf when stepping up onto a curb to perform a delivery. Dr. Innella noted that physical examination of the left calf demonstrated tenderness and swelling consistent with a tear of the plantar tendon and diagnosed a ruptured left plantaris tendon with compensatory tenosynovitis of the right calf. He opined that, within a reasonable degree of medical probability, appellant's diagnosed conditions were causally related to events at work on November 16 and 21, 2020. Dr. Innella explained that her injuries were consistent with a ruptured left plantaris tendon.

By decision dated March 30, 2022, OWCP reviewed the merits of appellant's claim and denied modification of its June 8, 2021 decision.³

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

³ This decision superseded and corrected a March 21, 2022 decision on reconsideration.

⁴ *Id.*

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. The first component is whether the employee experienced the employment incident at the time and 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 a 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 left lower extremity condition causally related to the accepted January 21, 2020 employment incident.

In support of her traumatic injury claim, appellant submitted a December 15, 2021 report from Dr. Innella, who opined that, to a reasonable degree of medical probability, appellant's diagnosed conditions were causally related to events at work on November 16 and 21, 2020 as her injuries were consistent with a ruptured left plantaris tendon. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to the accepted employment

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).

incident.¹¹ While Dr. Innella concluded that appellant's diagnosed conditions were causally related to the accepted employment incident, he did not explain with rationale how the accepted employment incident physiologically caused the injury. As such, this report is of limited probative value and insufficient to establish appellant's claim.

Appellant also submitted a series of reports from Dr. Innella from December 3, 2020 through March 17, 2021, as well as an emergency department report from Dr. Hong dated November 21, 2020. While these reports reviewed appellant's history of injury and contained medical diagnoses, they did not provide any medical opinion regarding the cause of appellant's diagnosed 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 This evidence is therefore insufficient to establish the claim.

Appellant submitted a number of reports from a physical therapist. The Board has held that medical reports signed solely by physical therapists are of no probative value, as physical therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide medical opinions regarding causal relationship.¹³ This evidence is therefore insufficient to establish the claim.

As the medical evidence of record is insufficient to establish that her diagnosed left ruptured plantaris tendon with compensatory tenosynovitis of the right calf is causally related to the accepted employment incident, the Board finds that she 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left lower extremity condition causally related to the accepted November 21, 2020 employment incident.

¹¹ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

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 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 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); see also *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board