United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 22-1004**
	)	**Issued: November 3, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, 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, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 22, 2022 appellant filed a timely appeal from a May 27, 2022, 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted June 10, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the May 27, 2022 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.

FACTUAL HISTORY

On April 14, 2022 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2021 she lost her balance and fell on a rock as she was approaching a mailbox and fractured her right ankle while in the performance of duty. She did not stop work.

A duty status report (Form CA-17) dated July 1, 2021 from an unidentifiable healthcare provider, diagnosed a right ankle sprain and provided work restrictions. Subsequent CA-17 forms dated December 7, 2021 and March 8 and April 8, 2022 from the another unidentifiable healthcare provider, reiterated the prior diagnoses of a right ankle sprain and fracture and provided work restrictions.

An April 8, 2022 note from Dr. Travis Bodeker, a Board-certified podiatrist, noted that appellant was treated that date and was held off work until April 11, 2022. Dr. Bodeker advised that she was able to perform limited- to light-duty work due to a right ankle injury and that she required the use of a brace until further notice. In a Form CA-17 dated April 14, 2022, he released appellant to full-duty work, with restrictions.

In an April 26, 2020 development letter, OWCP advised appellant of the type of medical evidence necessary to establish her claim and attached a questionnaire for her completion. It afforded appellant 30 days to submit the requested evidence.

In response, appellant submitted a medical report dated April 25, 2022 from Dr. Richard Trifiro, Board-certified in family medicine, who noted that appellant presented with a right ankle injury. Appellant reported that the injury occurred on June 10, 2021, when she suddenly tripped over a rock while delivering mail. Dr. Trifiro recorded appellant's description of needle-like pain and, upon examination, found swelling of the posterior Achilles insertion, radiating around anteriorly. He opined that her injury was the result of "twisting" while at work and diagnosed her with a right ankle sprain of an unspecified ligament.

In a work activity status report of even date signed by Dr. Trifiro, appellant was released to work on April 25, 2022 with updated restrictions of a maximum of four hours standing, eight hours sitting, and two hours walking, with mandated ankle splint support.

In an April 27, 2022 medical report, Dr. Trifiro conducted a physical examination which revealed lateral swelling in the right ankle with tenderness in the Achilles tendon insertion, anterior talofibular ligament, calcaneofibular ligament, peroneal retinaculum and posterior talofibular ligament. Pain continued throughout the Achilles, radiating laterally around to the tibiofibular ligament, although medial pain had improved. Dr. Trifiro noted appellant's right ankle sprain was in the beginning stages of healing. Appellant was directed to continue medication, apply heat therapy, and follow a home exercise program. A work activity status report of even date provided unchanged work restrictions and directions to return for reevaluation in one week.

On April 29, 2022 the employing establishment offered, and appellant accepted, a modified limited-duty assignment as a modified city carrier position with work duties to include casing and delivering mail, and physical restrictions of walking intermittently up to two hours per day.

In a return-to-work note dated May 3, 2022, family nurse practitioner Brenda Thomas, confirmed that appellant was seen that day and released her to work on May 4, 2022. In a Form CA-17 of even date, Ms. Thomas provided updated work restrictions including standing and kneeling for up to 30 minutes per day and no walking or climbing.

By decision dated May 27, 2022, OWCP accepted that the June 10, 2021 employment incident occurred as alleged. However, it 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 June 10, 2021 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]

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 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.[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

[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).

[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).

nature of the relationship between the diagnosed condition and the specific employment incident identified by the claimant.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right ankle condition causally related to the accepted June 10, 2021 employment incident.

In his April 25, 2022 reports, Dr. Trifiro related that she had sprained her right ankle on June 10, 2021 when she suddenly tripped over a rock while delivering mail at work. He diagnosed a moderate right ankle sprain and noted work restrictions. However, Dr. Trifiro did not provide an opinion on causal relationship. Likewise, in his April 27, 2022 follow-up note and work status report, he reiterated his work restrictions and noted that appellant's ankle sprain was in the beginning stages of healing. Dr. Trifiro did not, however, address causation. The Board has held that medical reports lacking an opinion on causal relationship are of no probative value.[10] Therefore, Dr. Trifiro's April 25 and 27, 2022 reports are insufficient to establish appellant's burden of proof.

Similarly, in an April 8, 2022 note, Dr. Bodeker limited appellant to light-duty work and held her off work until April 11, 2022. He did not provide an opinion as to the cause of her condition or its relation to the accepted June 10, 2021 employment incident. As noted above, medical reports lacking an opinion on causal relationship are of no probative value.[11] Thus, Dr. Bodeker's report is also insufficient to establish appellant's claim.

OWCP also received reports from Ms. Thomas, a family nurse practitioner. The Board has held that certain healthcare providers, such as nurses, are not considered "physicians" as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[13] This evidence, therefore, is of no probative value.

The remaining evidence of record consists of illegible reports and those from an unknown healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature

[9] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

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

[11] *Id*.

[12] *See B.R.*, Docket No. 21-1109 (issued December 28, 2021); *J.K.*, Docket No. 20-0591 (issued August 12, 2020); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

[13] *See 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); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law).

cannot be considered probative medical evidence as the author cannot be identified as a physician.[14] Thus, these reports have no probative value and are insufficient to establish the claim.

As appellant has not submitted rationalized medical evidence sufficient to establish causal relationship between her diagnosed right ankle condition and the accepted June 10, 2021 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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 ankle condition causally related to the accepted June 10, 2021 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

[14] *See T.P.*, Docket No. 21-0868 (issued December 21, 2021); *R.L.*, Docket No. 20-0284 (issued June 30, 2020); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).