United States Department of Labor
Employees' Compensation Appeals Board

S.D., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, SALISBURY VA MEDICAL CENTER, Salisbury, NC, Employer	)	**Docket No. 22-1057** **Issued: November 8, 2022**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 11, 2022 appellant filed a timely appeal from a July 7, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted May 9, 2022 employment incident.

FACTUAL HISTORY

On May 11, 2022 appellant, then a 31-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on May 9, 2022 she tripped on a comfort mat when filling

[1] 5 U.S.C. § 8101 *et seq*.

prescriptions and rolled her ankle while in the performance of duty. She further explained that she tripped into her coworker and sprained her ankle and suffered a possible muscle tear. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty. The form indicated that appellant stopped work on May 10, 2022.

In support of her claim, appellant submitted a report dated May 9, 2022 from Ray Rakhar, a certified physician assistant. Mr. Rakhar noted appellant's history of rolling her ankle at work and diagnosed right ankle sprain. Appellant was advised to use crutches and an ankle brace.

In a May 24, 2022 work status note, Jennifer Lyn Haugen, a physician assistant, opined that appellant required limited work hours due to the alleged injury. Appellant was restricted from standing more than four hours per day.

On June 2, 2022 OWCP received a letter from the employing establishment addressed to appellant offering a light-duty work assignment. The letter referenced the note from Ms. Haugen indicating that appellant could perform restricted work in a light-duty assignment.

In a development letter dated June 2, 2022, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It requested appellant to provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation from a physician as to how the work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond. No evidence was received.

By decision dated July 7, 2022, OWCP found that the incident had occurred as alleged, but denied appellant's traumatic injury claim, finding that appellant had not submitted any medical evidence containing a medical diagnosis, signed by a physician, causally relating a diagnosed medical condition to the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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, 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.[3] 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.[4]

[2] *Id*.

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether an employee sustained a traumatic injury in the performance of duty, it must first 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 actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[5]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted May 9, 2022 employment incident.

In support of her claim, appellant submitted a note dated May 9, 2022 from Mr. Rakhar who diagnosed a right ankle sprain. OWCP also received a work status note dated May 24, 2022 from Ms. Haugen. However, certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA and their reports do not constitute competent medical evidence.[6] These reports are, therefore, of no probative value and are insufficient to establish appellant's claim.

As the medical evidence of record does not contain a medical report, signed by a physician, causally relating a diagnosed medical condition to the accepted May 9, 2022 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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted May 9, 2022 employment incident.

[5] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

[6] 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); 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 H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 8, 2022
Washington, DC

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

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

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