United States Department of Labor
Employees' Compensation Appeals Board

K.S., Appellant	)	
	)	**Docket No. 22-0601**
and	)	**Issued: September 7, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Los Angeles, CA, 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:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 14, 2022 appellant, through counsel, filed a timely appeal from a November 19, 2021 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 over the merits of this case.[3]

[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*.

[3] The Board notes that, following the issuance of the November 19, 2021 decision, OWCP received additional evidence. 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. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right foot condition causally related to the accepted May 24, 2021 employment incident.

FACTUAL HISTORY

On May 28, 2021 appellant, then a 55-year-old rural postal collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on May 24, 2021 she injured her right foot when she slipped on a letter while in the performance of duty. She stopped work on the date of injury.

Appellant was treated on May 24, 2021 by Dr. Gervok Geshgian, an osteopath specializing in internal medicine. Dr. Geshgian noted a history of injury that appellant injured her right foot when she stepped out of a vehicle at work. He diagnosed stress fracture, right fibula, initial encounter for fracture; displaced fracture of the fourth metatarsal bone, right foot, initial; and displaced fracture of the fifth metatarsal bone, left foot, initial. Dr. Geshgian advised that appellant sustained a work-related injury.

OWCP, in a development letter dated June 1, 2021, informed appellant of the deficiencies of her claim and requested additional factual and medical evidence. It provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a June 11, 2021 response, appellant related that on May 24, 2021 she was loading mail into the back of her truck and, when she exited the vehicle, her right foot slid on a piece of mail. She reported her injury to a manager and planned to deliver her route. When appellant arrived at her route, her right foot was severely swollen and she could not put pressure on it. She reported her condition to her manager who instructed her to return to the station.

Appellant submitted reports from Dr. Michael J. Irvine, a physiatrist. In progress notes dated June 2 and 17, 2021, Dr. Irvine noted a history of injury that on May 24, 2021 she stepped off a truck and slipped on a letter, falling onto her right foot in an inverted position. He further noted appellant's right foot complaints and discussed examination findings. Dr. Irvine diagnosed right fourth metatarsal fracture nondisplaced, initial; and fifth metatarsal fracture nondisplaced, initial. He opined that the diagnosed conditions were more likely than not sustained by appellant while she was working at the employing establishment. Dr. Irvine concluded that she could perform modified activity with restrictions. In after visit summaries dated June 2 and 17, 2021, he indicated that he saw appellant for metatarsal foot bone fractures. In a June 4, 2021 attending physician's report (Form CA-20), Dr. Irvine restated her history of injury on May 24, 2021 and his diagnoses of right fourth metatarsal fracture nondisplaced, initial; and fifth metatarsal fracture nondisplaced, initial. He checked a box marked "No" indicating that the diagnosed conditions were not caused or aggravated by an employment activity. Dr. Irvine advised that appellant could resume light-duty work with restrictions on June 2, 2021. In industrial work status reports dated June 2 and 17, 2021, he placed her on modified activity at work and home with restrictions through July 8, 2021.

Appellant also submitted a June 9, 2021 work status report from Dr. Bret K. Batchelor, a Board-certified orthopedic surgeon. Dr. Batchelor placed appellant off work from June 2 through July 7, 2021.

An unsigned June 9, 2021 right foot x-ray report provided indications of right fourth metatarsal fracture, nondisplaced; and fifth metatarsal fracture, nondisplaced.

OWCP, by decision dated July 7, 2021, accepted that the May 24, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

In a June 29, 2021 report, Peter J. Villarreal, a physician assistant, noted a date of injury as May 24, 2021 and provided assessments of right foot fourth and fifth metatarsal shaft fractures.

OWCP subsequently received an additional industrial work status report and a progress note dated July 8, 2021 from Dr. Irvine who reiterated his prior diagnoses of right fourth and fifth nondisplaced metatarsal fractures. Dr. Irvine placed appellant on modified activity at work and home with restrictions from July 8 through 15, 2021.

Dr. Mi Zheng, an occupational medicine specialist, in reports dated July 15, 2021, noted a May 24, 2021 date of injury and diagnosed right fourth and fifth displaced metatarsal fractures. She placed appellant on modified duty at work and home with restrictions from July 15 through August 11, 2021.

On August 2, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the July 7, 2021 decision.

By decision dated November 19, 2021, OWCP's hearing representative affirmed the July 7, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[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

[4] *Id*.

[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).

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 that 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. 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 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 incident identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right foot condition causally related to the accepted May 24, 2021 employment incident.

In support of her claim, appellant submitted a May 24, 2021 report from Dr. Geshgian who diagnosed stress fracture and right fibula fracture; displaced fracture of the right foot fourth and fifth metatarsal bones, right foot, initial; displaced fractures on the right foot fourth metatarsal bone; and displaced fracture on the left foot fifth metatarsal bone. He opined that appellant sustained a work-related injury. While Dr. Geshgian provided an affirmative opinion suggestive of causal relationship, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident caused or aggravated

[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).

the diagnosed condition, Dr. Geshgian's opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.[11]

Appellant also submitted medical evidence from Dr. Irvine. In progress notes dated June 2 and 17, 2021, Dr. Irvine diagnosed right fourth and fifth nondisplaced metatarsal fractures and opined that it was more likely than not that appellant's diagnosed conditions were caused by the May 24, 2021 employment incident. While he provided an opinion on the causal relationship, his opinion is speculative in nature. The Board has held that speculative and equivocal medical opinions regarding causal relationship have diminished probative value.[12] Dr. Irvine's progress notes are, therefore, insufficient to establish causal relationship. In a June 4, 2021 Form CA-20 report, he reiterated his prior diagnoses of right fourth and fifth nondisplaced metatarsal fractures. Dr. Irvine failed to provide an opinion regarding how appellant's slip and fall on May 24, 2021 was causally related to her right foot conditions.[13] To the contrary, he checked a box marked "No" indicating that appellant's conditions were not caused or aggravated by an employment activity. Dr. Irvine's remaining reports dated June 2 and 17 and July 8, 2021 restated his right foot diagnoses and addressed appellant's work capacity and work restrictions, but do not address causal relationship. 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.[14] For these reasons, the Board finds that the medical evidence from Dr. Irvine is insufficient to establish appellant's claim.

Similarly, Dr. Batchelor's June 9, 2021 work status report and Dr. Zheng's July 15, 2021 progress note and industrial work status report diagnosed right fourth and fifth nondisplaced metatarsal fractures, and addressed appellant's work capacity and restrictions, but neither physician offered an opinion on the cause of appellant's conditions. As previously noted, medical evidence that does not offer an opinion regarding an employee's condition or disability is of no probative value.[15] Thus, this evidence is also insufficient to establish appellant's claim.

Appellant submitted a report from Mr. Villarreal, a physician assistant. However, certain healthcare providers such as physician assistants, are not considered physicians as defined under

[11] *See B.T.*, Docket No. 22-0022 (issued May 23, 2022); *J.G.*, Docket No. 21-1334 (issued May 18, 2022); *C.W.*, Docket No. 21-1204 (issued March 11, 2022); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *M.D.*, Docket No. 18-0195 (issued September 13, 2018); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

[12] *See C.M.*, Docket No. 22-0114 (issued May 11, 2022); *P.P.*, Docket No. 21-1163 (issued March 30, 2022); *M.G.*, Docket No. 21-0747 (issued October 15, 2021).

[13] *J.W.*, Docket No. 18-1246 (issued February 13, 2019).

[14] *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *S.W.*, Docket No. 19-1579 (issued October 9, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[15] *Id*.

FECA.[16] Consequently, this report will not suffice for purposes of establishing entitlement to FECA benefits.[17]

Appellant also submitted an unsigned June 9, 2021 right foot x-ray report. 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.[18] Accordingly, this report is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a right foot condition causally related to the accepted May 24, 2021 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 right foot condition causally related to the accepted May 24, 2021 employment incident.

[16] Section 8101(2) 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *A.C.*, Docket No. 20-1510 (issued April 23, 2021) (physician assistants are not physicians as defined by FECA); *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).

[17] *Id*.

[18] *C.W.*, Docket No. 21-1095 (issued May 20, 2022); *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).

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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