United States Department of Labor
Employees' Compensation Appeals Board

D.C., Appellant	)	
and	)	**Docket No. 21-0806**
	)	**Issued: February 1, 2023**
DEPARTMENT OF AGRICULTURE, ANIMAL & PLANT HEALTH INSPECTION SERVICE, Raleigh, NC, 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 May 3, 2021 appellant filed a timely appeal from a February 25, 2021 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 his burden of proof to establish a diagnosed medical condition in connection with the accepted November 16, 2020 employment incident.

FACTUAL HISTORY

On November 18, 2020 appellant, then a 61-year-old city general biological scientist, filed a traumatic injury claim (Form CA-1) alleging that on November 16, 2020 he sprained or fractured

[1] 5 U.S.C. § 8101 *et seq.*

his right ankle when he stepped in a hole in a grassy area while in the performance of duty. He did not stop work.

In a physical therapy note dated December 21, 2020, Aaron Lubick, a physical therapist, sought approval to provide treatment to appellant's right ankle between December 24, 2020 and February 15, 2021.

In a January 7, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim, and afforded him 30 days to submit the necessary evidence.

Thereafter, OWCP received a physical therapy note dated December 16, 2020, bearing an illegible signature and reflecting a diagnosis of right ankle sprain.

In a January 15, 2021 statement, appellant indicated that Dr. Waseem Hussain recommended that appellant undergo physical therapy and that he would request that second physician, provide forms and x-rays to OWCP.

By decision dated February 25, 2021, OWCP accepted that the November 16, 2020 employment incident occurred, as alleged. However, it denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted employment incident. Consequently, OWCP found that he had not met the requirements 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,[3] 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.[4] 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.[5]

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

[2] *Id.*

[3] *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).

[4] *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).

[5] *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).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[6]

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 the specific employment incident identified by the claimant.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted November 16, 2020 employment incident.

In support of his claim, appellant submitted a physical therapy note dated December 16, 2020, bearing an illegible signature[9] and reflecting a diagnosis of right ankle sprain. Reports that are unsigned or that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification[10] as the author cannot be identified as a physician.[11]

Appellant also submitted a physical therapy note by Aaron Lubick, a physical therapist. This form has no probative value, however, because physical therapists are not considered physicians as defined under FECA.[12]

The Board finds that there is no evidence of record that establishes a valid medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, appellant has not met his burden of proof.

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[6] *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).

[7] *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).

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

[9] 20 C.F.R. § 10.331(a) provides that, use of medical report forms is not required; however, the report should bear the physician's signature or signature stamp.

[10] *W.L.*, Docket No. 19-1581 (issued August 5, 2020).

[11] *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[12] Section 8102(2) of FECA provides as follows: (2) 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); *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); *E.W.*, Docket No. 20-0338 (issued October 9, 2020); *Jane White*, 34 ECAB 515, 518 (1983) (physical therapists are not considered physicians under FECA).

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 his burden of proof to establish a diagnosed medical condition in connection with the accepted November 16, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2023
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