United States Department of Labor
Employees' Compensation Appeals Board

C.T., Appellant	)	
and	)	**Docket No. 22-0885**
	)	**Issued: January 17, 2023**
DEPARTMENT OF VETERANS AFFAIRS, NEW YORK HARBOR HEALTHCARE SYSTEM, MARGARET COCHRAN CORBIN VA CAMPUS, New York, NY, Employer	)	

Appearances:
Thomas S. Harkins, Esq., for the appellant[1]
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
JANICE B. ASKIN, Judge

JURISDICTION

On May 25, 2022 appellant, through counsel, filed a timely appeal from a December 8, 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.

[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 his burden of proof to establish a medical condition causally related to the accepted June 17, 2020 employment incident.

FACTUAL HISTORY

On July 18, 2020 appellant, then a 60-year-old medical instrument technician, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2020 he twisted his right ankle and injured his right arm when his right foot became caught in the water line of a dialysis machine and struck his right arm against a wall while in the performance of duty. He stopped work on June 23, 2020. On the reverse side of the form, S.C., appellant's supervisor, noted that appellant had not reported the injury until he left work on June 23, 2020.

On July 18, 2020 OWCP received a work excuse slip dated June 28, 2020 signed by Dr. Kara Dienes, an emergency medicine specialist, holding appellant off work until July 1, 2020; July 1, 2020 reports by Dr. Anita Szerszen, Board-certified in internal medicine and geriatrics, holding appellant off work through July 10, 2020;[3] a July 10, 2020 work slip by Dr. Steven Lin, a Board-certified neurologist, holding appellant off work through July 23, 2020; and a July 14, 2020 work slip by Antonio Kamel, a physician assistant.

In a July 23, 2020 statement, S.C., appellant's supervisor, controverted the claim. She contended that on June 23, 2020 at approximately 12:00 p.m., when a charge nurse asked appellant to take a dialysis machine off site, he informed the charge nurse that his leg had been hurting him. The charge nurse asked appellant if he wanted to go to the employee health clinic. Appellant later went to the clinic, had an x-ray performed and was prescribed pain medication. S.C. then asked appellant what had occurred. Appellant allegedly indicated that on June 18, 2020 he twisted his ankle while in the mechanical room but had not reported the incident.

In a development letter dated July 27, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided him a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an August 17, 2020 response, appellant asserted that on June 17, 2020, while connecting lines to a dialysis machine, his foot caught on one of the wires, causing it to twist his ankle and trip him such that he caught himself by hitting his arm on a wall. He contended that he reported the incident to S.C. and a nurse on June 18, 2020. S.C. instructed appellant to go to the employee health unit, where he was examined and an x-ray obtained. S.C. then gave appellant "a couple days off to rest." On June 21, 2020 appellant consulted his primary physician, Dr. Eliyahu Kopstick, a Board-certified internist, who prescribed medication. On June 28, 2020 he sought treatment at a hospital emergency department, where additional x-rays were taken. Appellant was prescribed additional medication. As his symptoms continued, he consulted Dr. Szerszen on

[3] On July 18, 2020 OWCP received a July 1, 2020 magnetic resonance imaging (MRI) scan of the right ankle, which noted mild tenosynovitis of the posterior tibialis, flexor digitorum longus, peroneus brevis, and peroneus longus, mild Achilles tendinosis, edema in the sinus tarsi, diffuse edema throughout the musculature likely due to neuropathy, and a prior sprain of the anterior distal syndesmotic ligament, deep fibers of the deltoid ligament, and spring ligament.

July 1, 2020 and Dr. Lin on July 7, 2020. On July 10, 2020 appellant consulted Dr. Hilary Alpert, a Board-certified orthopedic surgeon, who prescribed a walking boot and physical therapy.

In an August 11, 2020 work slip, Dr. Alpert held appellant off work through September 29, 2020.

In an August 14, 2020 attending physician's report (Form CA-20) and a duty status report (Form CA-17) of even date, Dr. Alpert noted a June 18, 2020 employment incident in which appellant rolled his right ankle and fell to the floor. She noted that an MRI scan demonstrated posterior tibial and Achilles tendinosis. Dr. Alpert diagnosed right peroneal tendinosis, right Achilles tendinitis, and a right ankle sprain. In a form report of even date, Dr. Alpert held appellant off work from June 18 through September 29, 2020.[4]

By decision dated August 31, 2020, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the employment event occurred as alleged. It noted that on his claim form, he indicated that he had been injured on June 10, 2020, but in his August 17, 2020 statement he alleged the date of injury as June 17, 2020.

On August 22, 2021 appellant, through counsel, requested reconsideration.

Appellant submitted a July 15, 2020 report by Dr. Germaine N. Rowe, a Board-certified physiatrist. Dr. Rowe recounted that on June 12, 2020 appellant twisted his right ankle and experienced the onset of lumbar pain and secondary right shoulder pain. On examination she noted lumbar paraspinal tenderness, a positive right straight leg raising test, and antalgic gait. Dr. Rowe noted that imaging studies suggested degenerative canal narrowing, most pronounced at C5-6, a small L5-S1 disc herniation in the right lateral recess with impingement of the descending right S1 nerve root, and a small L3-4 disc bulge with mild compression of the exiting right L3 nerve root.

In a September 29, 2020 report, Dr. Alpert recounted a June 12, 2020 employment injury where appellant rolled his right ankle and fell to the floor. His right ankle symptoms had since resolved. On examination of the right ankle Dr. Alpert found no tenderness to palpation, full strength, full range of motion, and normal sensation. She diagnosed right peroneal tendinosis, right Achilles tendinitis, deltoid ligament sprain of the right ankle, and sprain of other ligament of the right ankle. Dr. Alpert returned appellant to full-duty work with no restrictions effective September 29, 2020.

By decision dated December 8, 2021, OWCP modified the August 31, 2020 decision, accepting that the employment incident occurred on June 17, 2020 as alleged, based on appellant's August 17, 2020 statement, and S.C.'s July 23, 2020 supervisory statement. However, it denied the claim as the medical evidence of record did not contain an accurate history of injury. OWCP found that Dr. Alpert and Dr. Rowe noted a June 12, 2020 incident, and that Dr. Alpert provided an inaccurate description of the mechanism of injury.

[4] On August 17, 2020 OWCP received a July 2, 2020 cervical MRI scan, which demonstrated degenerative mild canal narrowing most pronounced at C5-6, mild foraminal narrowing at C5-6, and a possible T4-5 disc herniation.

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] has the burden of proof to establish the essential elements of his or her claim, including the fact 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,[6] 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.[7] 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.[8]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[9] Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred. The second component is whether the employment incident caused a personal injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment incident must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).[13]

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[5] 20 C.F.R. § 10.607(a).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

[7] *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

[8] *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

[9] *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 6 at Chapter 2.1602.5 (September 2020).

[10] *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

[11] *Id*.

[12] *Supra* note 6 at Chapter 2.1602.4 (September 2020); *Veletta C. Coleman*, 48 ECAB 367, 370 (1997).

[13] 20 C.F.R. § 10.607(b); *F.C.*, Docket No. 21-1420 (issued June 29, 2022); *see Debra McDavid*, 57 ECAB 149 (2005).

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a medical condition causally related to the accepted June 17, 2020 employment incident.

OWCP received July 1, 2020 reports by Dr. Szerszen and a July 10, 2020 work slip by Dr. Lin holding appellant off work. OWCP also received a work slip dated June 28, 2020 that was signed by Dr. Dienes. However, none of these physicians provided an opinion on 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] Therefore, this evidence is insufficient to establish the claim.

Dr. Alpert, in an August 11, 2020 work slip, held appellant off work through September 29, 2020 but did not explain why. In reports dated August 14, 2020, she noted a June 18, 2020 employment incident in which appellant rolled his right ankle and fell to the floor. In a September 29, 2020 report, Dr. Alpert again recounted that appellant had rolled his right ankle and fallen to the floor, but changed the date of the incident to June 12, 2020. However, Dr. Alpert did not provide an opinion on causal relationship. As noted above, 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.[15] Therefore, this evidence is insufficient to establish the claim.

Dr. Rowe, in a July 15, 2020 report, noted a June 12, 2020 incident where appellant twisted his right ankle and experienced the onset of lumbar and right shoulder pain. She did not mention the accepted June 17, 2020 incident. However, Dr. Rowe did not provide an opinion on causal relationship.[16] Therefore, this report is also insufficient to establish the claim.

Additionally, OWCP received a July 14, 2020 work slip by Mr. Kamel. The Board has held that the reports of a physician assistant are of no probative value as a physician assistant is not considered a physician as defined under FECA and, therefore, is not competent to provide a medical opinion.[17] The work slip from Mr. Kamel is, therefore, insufficient to establish appellant's claim.

The record also contains imaging studies. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not

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

[15] *Id*.

[16] *Id*.

[17] 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. § 8102(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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*, 56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

provide an opinion on causal relationship between an employment incident and a diagnosed condition.[18]

As the medical evidence of record is insufficient to establish medical condition causally related to the accepted June 17, 2020 employment incident, the Board finds that he has not met his 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 his burden of proof to establish a medical condition causally related to the accepted June 17, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the December 8, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

[18] *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, *supra* note 14; *D.K.*, *supra* note 14.