United States Department of Labor
Employees' Compensation Appeals Board

A.F., Appellant	)	
and	)	**Docket No. 22-1135**
	)	**Issued: January 5, 2023**
U.S. POSTAL SERVICE, BOGGS ROAD POST OFFICE, Duluth, GA, 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
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 25, 2022 appellant filed a timely appeal from a February 8, 2022 merit decision and a June 30, 2022 nonmerit 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]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a left ankle condition causally related to the accepted August 26, 2020 employment incident; and (2) whether

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 30, 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. *Id*.

OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On August 29, 2020 appellant, then a 50-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2020 she sustained a left ankle injury when a chair she was sitting in did not roll properly, got stuck in grooves on the floor, and "flipped" her to the floor, causing her to twist her left ankle while in the performance of duty. She stopped work on August 26, 2020 and returned to work on August 28, 2020. Appellant did not submit any additional documents with her Form CA-1.

In a September 2, 2020 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed. OWCP afforded appellant 30 days to respond. Appellant did not respond.

By decision dated October 7, 2020, OWCP denied appellant's claim for an August 26, 2020 employment injury, finding that she failed to establish the factual component of fact of injury. It noted that the evidence did not support that the injury and/or event(s) occurred. OWCP concluded, therefore, that the requirements had not been met to establish an injury defined by FECA.

On November 5, 2020 appellant requested reconsideration of the October 7, 2020 decision.

Appellant submitted the first page of an authorization for examination and/or treatment (Form CA-16), which was signed on August 26, 2020 by a postmaster for the employing establishment. The form provided a description of the August 26, 2020 employment incident. Appellant also submitted an undated and unsigned duty status report (Form CA-17), which listed the date of injury as August 26, 2020, provided a diagnosis of left ankle sprain, and recommended full-time work with restrictions commencing August 26, 2020.

By decision dated December 8, 2020, OWCP continued to deny appellant's claim for an August 26, 2020 employment injury. It noted, "[t]he evidence is sufficient to modify the decision dated [October 7, 2020] from a denial based on one of the [five] basic elements for FECA coverage to a denial based on another basic element." OWCP did not identify the new basis for the denial of appellant's claim, but indicated that "the case remains denied for insufficient evidence to meet all [five] basic elements for FECA coverage."

On November 18, 2021 appellant requested reconsideration of the December 8, 2020 decision.

Appellant submitted an August 26, 2020 report from Shibana Cutter, a nurse practitioner, who noted that appellant reported that she injured her left ankle at work on that date when she rolled in a chair, hit a groove on the floor, and flipped out of the chair. Ms. Cutter detailed physical examination findings for the left ankle, including mild swelling, moderate tenderness on palpation, and normal muscle strength and stability. She diagnosed sprain of unspecified ligament of the left ankle and limited appellant to modified-duty work. Appellant also submitted August 28 and

September 15, 2020 reports of Whitney Winston-Parker, a nurse practitioner, a September 3, 2020 report of Benjamin Roby, a physician assistant, and a September 10, 2020 report of Cheryl Cason, a nurse practitioner. These providers also reported appellant's description of the August 26, 2020 employment incident, provided physical examination findings, and diagnosed sprain of unspecified ligament of the left ankle.[3]

A report of August 26, 2020 x-rays of appellant's left ankle contained an impression of "normal left ankle x-ray."

In a September 2, 2021 report, Dr. Mason N. Florence, a Board-certified orthopedic surgeon, noted that appellant's reported pain in her entire left leg "does not really correlate with the ankle injury that she had." He reported physical examination findings, noting full range of motion in the left lower leg, ankle, and foot. Dr. Florence advised that July 1, 2021 x-rays of the ankles revealed evidence of previous ankle fractures, which were well healed. He diagnosed left leg pain and bilateral ankle fractures, and indicated that there was no further treatment that he could offer appellant.

By decision dated February 8, 2022, OWCP accepted that appellant had established the occurrence of the August 26, 2020 employment incident, as alleged. However, it denied her claim, finding that she had not submitted a well-reasoned medical report establishing a diagnosed condition causally related to the accepted August 26, 2020 employment incident.

On April 11, 2022 appellant requested reconsideration of the February 8, 2022 decision.

Appellant submitted an April 20, 2022 report of Dr. Randy L. Mayfield, an attending chiropractor, who indicated that appellant reported suffering an injury at work on August 23, 2020 when the wheels of a chair became stuck in a groove in the floor and the chair flipped over, causing her to fall to the floor. Dr. Mayfield indicated that appellant also reported suffering a fall at work in 2017, which caused fractures in both ankles and necessitated surgery. He advised that, since the August 23, 2020 accident, appellant complained of increased low back, left ankle, and left leg pain. Dr. Mayfield noted, "[t]he fall exacerbated and aggravated a previously broken left ankle, sprained left knee, and sprained patient's lower back. The patient has had an abnormal limping gait, due to left ankle pain, left knee pain and severe-to-moderate lower back pain since the accident of [August 23, 2020]." Dr. Mayfield indicated that he was attaching office notes produced in September and October 2021. The attached notes contained diagnoses of several conditions, including lumbago with sciatica, and sprains of the left ankle, left knee, lumbar spine, and sacroiliac joint. Appellant also resubmitted an undated and unsigned Form CA-17.

By decision dated June 30, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[3] The above-described reports contained notations that they were produced in care of Dr. Brandon L. Dawkins, Dr. Alton Greene, and Dr. Stephen A. Dawkins, each of whom is a Board-certified occupational medicine specialist. However, none of these physicians signed the reports.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA 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 and that the claim was filed within the applicable time limitation period 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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. 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.[7] The second component is whether the employment incident caused a personal injury.[8]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.[9] Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted August 26, 2020 employment incident.

Appellant submitted a September 2, 2021 report from Dr. Florence who noted that appellant's reported pain in her entire left leg "does not really correlate with the ankle injury that she had." Dr. Florence reported physical examination findings and advised that July 1, 2021 x-rays of the ankles showed evidence of previous left ankle fractures which were well healed. He

[4] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

[6] *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).

[7] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

[10] *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

diagnosed left leg pain and bilateral ankle fractures. The Board finds that this report is of no probative value regarding appellant's claim for an August 26, 2020 employment injury because Dr. Florence did not provide an opinion regarding how the diagnosed condition related to the accepted August 26, 2020 employment incident, *i.e.*, her fall from a chair to the floor. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[11] Therefore, Dr. Florence's September 2, 2021 report is insufficient to establish appellant's claim.

Appellant submitted an August 26, 2020 report of Ms. Cutter, a nurse practitioner, August 28 and September 15, 2020 reports of Ms. Winston-Parker, a nurse practitioner, a September 3, 2020 report of Mr. Roby, a physician assistant, and a September 10, 2020 report of Ms. Cason, a nurse practitioner. The Board has held, however, that nurses, physician assistants, physical therapists are not considered physicians as defined under FECA and their reports do not constitute competent medical evidence.[12] Therefore, these reports are of no probative value and are insufficient to meet appellant's burden of proof to establish an August 26, 2020 employment injury.

Appellant submitted an undated and unsigned Form CA-17, which listed the date of injury as August 26, 2020, provided a diagnosis of left ankle sprain, and recommended full-time work with restrictions commencing August 26, 2020. However, the Board has held that unsigned reports and reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification.[13] Therefore, this report is insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a medically-diagnosed condition in connection with the accepted August 26, 2020 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.

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

[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. § 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); *see also B.D.*, Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021).

[13] *R.C.*, Docket No. 18-1639 (issued February 26, 2019); *see also Merton J. Sills*, 39 ECAB 572, 575 (1988).

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.[14] To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.[15]

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.[16] If it chooses to grant reconsideration, it reopens and reviews the case on its merits.[17] If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.[18] The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record[19] and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[20]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On April 11, 2022 appellant filed a timely request for reconsideration of a February 8, 2022 decision.[21] The Board finds, however, that she neither established that OWCP erroneously applied or interpreted a specific point of law, nor did she advance a relevant legal argument not previously considered by OWCP. Accordingly, the Board finds that appellant is not entitled to a review of

[14] 5 U.S.C. § 8128(a); *see L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

[15] 20 C.F.R. § 10.606(b)(3); *see M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

[16] 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

[17] *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

[18] *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

[19] *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[20] *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

[21] *See J.F.*, Docket No. 16-1233 (issued November 23, 2016).

the merits based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

On reconsideration appellant submitted an April 20, 2022 report of an attending chiropractor, Dr. Mayfield, along with a collection of his chiropractic notes dated in September and October 2021. While this evidence is new, it is not relevant because it does not directly address the underlying issue of the present case, *i.e.*, whether appellant submitted sufficient probative medical evidence to establish an injury causally related to the accepted August 26, 2020 employment incident. Dr. Mayfield's reports do not constitute medical evidence because Dr. Mayfield did not diagnose a spinal subluxation as demonstrated by x-rays to exist.[22] The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.[23] Because Dr. Mayfield's reports have no relevance to the above-described underlying medical issue, their submission would not require reopening of appellant's case. Appellant also resubmitted an undated and unsigned Form CA-17, but the Board has held that the submission of evidence or argument, which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.[24] Therefore, appellant is not entitled to further review of the merits of her claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.[25]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted August 26, 2020 employment incident. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

[22] 5 U.S.C. § 8101(2). *See also* 20 C.F.R. § 10.311; *S.R.*, Docket No. 22-0421 (issued July 15, 2022).

[23] *See supra* note 20.

[24] *See supra* note 19.

[25] Upon return of the case record, OWCP should consider combining all of appellant's relevant claim files.

ORDER

IT IS HEREBY ORDERED THAT the February 8 and June 30, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.[26]

Issued: January 5, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[26] Appellant also submitted the first page of a Form CA-16, which was signed by a postmaster for the employment establishment. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).