United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 23-0356**
	)	**Issued: July 27, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Tampa, FL, 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 January 5, 2023 appellant filed a timely appeal from a November 16, 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 in connection with the accepted September 27, 2022 employment incident.

FACTUAL HISTORY

On October 5, 2022 appellant, then a 40-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 27, 2022 she sustained injury to her right foot when

[1] 5 U.S.C. § 8101 *et seq.*

she stepped out of her postal vehicle and "hurled" her foot forward and heard a popping sound while in the performance of duty. She did not stop work.

Appellant submitted the authorization page of an authorization for examination and/or treatment (Form CA-16), which was signed by her supervisor on September 27, 2022. In a September 27, 2022 narrative report, Maria Ortiz, a nurse practitioner, indicated that appellant reported that on September 27, 2022 she jumped down from her postal vehicle and felt a crack in her right foot. She detailed her physical examination findings, including tenderness in the right foot metatarsals, and diagnosed "right foot injury." A portion of the report, signed by Laura Cordoba, a nurse practitioner, contains a description of September 27, 2022 x-rays of appellant's right foot. In a September 27, 2022 form report, Ms. Ortiz noted that appellant had sought treatment for a work-related injury and diagnosed right foot sprain. She checked a box to indicate that no functional limitations were identified, and no restrictions were prescribed.

In an October 3, 2022 narrative report, Alexandra Rigaud, a nurse practitioner, indicated that appellant reported that her right foot condition was "50 percent better" and that she was working in her regular job without restrictions. Ms. Rigaud diagnosed right foot sprain. In an October 3, 2022 form report, she diagnosed right foot sprain and checked a box to indicate that no functional limitations were identified and no restrictions were prescribed.

In an October 12, 2022 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, including a narrative report from an attending physician which contained a diagnosis and opinion explaining how the reported work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to respond.

Appellant submitted an October 10, 2022 narrative report, in which Ms. Cordoba diagnosed right foot sprain and "work[-]related injury." In an October 10, 2022 form report, Ms. Cordoba diagnosed right foot sprain and checked a box to indicate that no functional limitations were identified and no restrictions were prescribed.

By decision dated November 16, 2022, OWCP accepted that appellant had established the occurrence of the September 27, 2022 employment incident, as alleged. However, it denied her claim, finding that she had not submitted a medical report from a qualified physician which diagnosed a medical condition in connection with the accepted September 27, 2022 employment incident.

LEGAL PRECEDENT

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 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.[2] 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.[3]

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 at the time, place, and in the manner alleged.[4] The second component is whether the employment incident caused a personal injury.[5]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[6] 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 factors identified by the employee.[7]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted September 27, 2022 employment incident.

Appellant submitted a September 27, 2022 narrative report from Ms. Ortiz, a nurse practitioner, who indicated that appellant reported that on September 27, 2022 appellant jumped down from her postal vehicle and felt a crack in her right foot. Ms. Ortiz detailed her physical examination findings, including tenderness in the right foot metatarsals and diagnosed "right foot injury." A portion of the report, signed by Ms. Cordoba, a nurse practitioner, contains a description of September 27, 2022 x-rays of appellant's right foot. In a September 27, 2022 form report, Ms. Ortiz noted that appellant had sought treatment for a work-related injury and diagnosed right foot sprain. In an October 3, 2022 narrative report and form report of the same date, Ms. Rigaud, a nurse practitioner, diagnosed right foot sprain. In an October 10, 2022 narrative report, Ms. Cordoba diagnosed right foot sprain and "work[-]related injury." In an October 10, 2022 form report, she diagnosed right foot sprain.

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

[3] *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).

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

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

[6] *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).

[7] *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 Board notes, however, that certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined under FECA.[8] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[9]

As the medical evidence of record is insufficient to establish a medical condition diagnosed in connection with the accepted September 27, 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 in connection with the accepted September 27, 2022 employment incident.

[8] Section 8102(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 J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA); *A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

[9] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2022 decision of the Office of Workers' Compensation Programs is affirmed.[10]

Issued: July 27, 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

[10] The case record contains a Form CA-16 signed by appellant's supervisor on September 27, 2022. 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).