United States Department of Labor
Employees' Compensation Appeals Board

E.H., Appellant	)	
and	)	**Docket No. 23-0373**
	)	**Issued: July 7, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Sioux Falls, SD, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On January 21, 2023 appellant filed a timely appeal from a January 12, 2023 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 factors of her federal employment.

FACTUAL HISTORY

On December 7, 2022 appellant, then a 57-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a severe infection after a large blister formed over her toenail due to factors of her federal employment, including standing on her

[1] 5 U.S.C. § 8101 *et seq*.

feet for up to seven hours per shift sorting packages. She explained that she wore work-approved shoes that produced friction against her right toe and created a blister that, eventually popped, became infected, and caused her toenail to fall off on December 5, 2022. Appellant related that the infection subsequently resolved and was being monitored. She indicated that she first became aware of her condition on October 27, 2022 and realized its relation to her federal employment on October 31, 2022. Appellant stopped work on November 12, 2022 and returned later that same day.

In support of her claim, appellant submitted return to work notes dated November 7, 9, and 16, 2022 from Carol Lehman, a nurse practitioner, noting that appellant was treated on those dates and releasing her to work on November 9 and 16, 2022, with work restrictions of walking limited to two hours per shift and sitting as much as possible.

Appellant also submitted a November 12, 2022 statement relating that the infection in her right big toe was caused by friction from her shoe that occurred while working at the employing establishment for approximately seven hours per shift. She noted that her duties included walking, moving cages and containers, and using pallet jacks. Appellant explained that the stress placed on her right foot from starting and stopping caused a toe blister that became infected with staphylococcus and streptococcus. She indicated that she noticed a large blister covering most of her toe on October 31, 2022 and saw a physician on November 3, 7, and 9, 2022 after which she was prescribed antibiotics and advised to purchase different shoes for work.

In a December 8, 2022 challenge letter, the employing establishment challenged the claim, asserting that appellant had failed to provide a detailed description of the factors responsible for the condition, a history of the condition, or relevant medical reports.

In a December 8, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor. It afforded both parties 30 days to submit the requested evidence.

Thereafter, OWCP received a December 7, 2022 duty status report (Form CA-17) and return to work note from Ms. Lehman indicating that the alleged employment incident occurred on October 31, 2022 and that the infection of appellant's right big toe was caused by friction from her shoe while working at the employing establishment for approximately seven hours per shift. Ms. Lehman diagnosed toe pain and mild cellulitis, noted findings of blisters on the toe and loss of toenail, and returned appellant to work full time with no restrictions.

In a December 9, 2022 statement, an employing establishment supervisor concurred with appellant's November 12, 2022 statement and related that appellant was tasked with sorting parcels in two different manual operations for up to eight hours, including walking to place parcels in a nearby container. The supervisor noted that appellant's work restrictions were modified to include a 20-minute break, every two hours, and indicated that he advised her to purchase a different style of work shoe.

In a December 13, 2022 report of work status (Form CA-3), the employing establishment related that appellant stopped work on November 5, 2022 and returned to full-duty work with no restrictions on December 7, 2022.

By decision dated January 12, 2023, OWCP accepted the implicated employment factors. However, it denied appellant's occupational disease claim, finding that she had not submitted evidence containing a medical diagnosis from a qualified physician in connection with the accepted factors of her federal employment. Consequently, OWCP found that the requirements had not been met 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[6]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[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

[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).

[6] *T.D.*, Docket No. 20-0921 (issued November 12, 2020); *M.S.*, Docket No. 18-1554 (issued February 8, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted factors of her federal employment.

In support of her claim, appellant submitted return to work notes dated November 7, 9, and 16, 2022 from Ms. Lehman, a nurse practitioner, noting that she had treated appellant and was releasing her to work with restrictions. OWCP also received a December 7, 2022 Form CA-17 and return to work note in which Ms. Lehman diagnosed toe pain and mild cellulitis and noted findings of blisters on the toe and loss of toenail. However, the Board has long held that certain healthcare providers such as nurse practitioners and physician assistants are not considered "physician[s]" as defined under FECA.[9] Consequently, their medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[10] Accordingly, these reports are insufficient to satisfy appellant's burden of proof.[11]

As appellant has not submitted medical evidence establishing a diagnosed medical condition in connection with the accepted factors of her federal employment, the Board finds that she has not met her burden of proof to establish her claim.

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 factors of her federal employment.

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *supra* note 6.

[9] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[10] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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).

[11] *R.H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

ORDER

IT IS HEREBY ORDERED THAT the January 12, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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