United States Department of Labor
Employees' Compensation Appeals Board

P.B., Appellant	)	
and	)	**Docket No. 23-0449**
	)	**Issued: July 28, 2023**
DEPARTMENT OF VETERANS AFFAIRS, PERRY POINT VA MEDICAL CENTER, Perry Point, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 13, 2023 appellant, through counsel, filed a timely appeal from a December 22, 2022 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 her burden of proof to establish a left ankle condition causally related to the accepted December 26, 2019 employment incident.

FACTUAL HISTORY

This case has been previously before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On December 30, 2019 appellant, then a 60-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 2019 she sustained a left ankle ligament sprain when she went up on her toes to try to detangle oxygen tubing that was wrapped around the head and foot of a resident's bed while in the performance of duty. She stopped work on December 26, 2019 and returned to work on December 30, 2019.

Appellant was evaluated on December 26, 2019 by Nicholas F. Wunder, a physician assistant, and Dr. Charisse C. Davenport, an osteopathic physician Board-certified in internal medicine. This report noted that appellant had experienced left ankle and foot pain over the last two days. Appellant's diagnosis was listed as a sprain of other ligament of left ankle, initial encounter. Dr. Davenport excused appellant from work as of December 26, 2019 and advised that she could return to regular activity on December 30, 2019.

An unsigned and undated duty status report (Form CA-17) noted a history of injury that appellant experienced left ankle pain while stretching on December 26, 2019.

An employing establishment report of contact dated January 2, 2020 from A.J., a nurse manager, noted that she was informed by T.E., an assistant nurse manager, that appellant needed to leave work because she experienced tendinitis due to her medication. She further noted that appellant did not inform T.E. about her alleged injury before she left work. A.J. related that when appellant returned to work on December 30, 2019, she explained that her alleged injury resulted from reaching for an item for a patient and her medication.

OWCP, by development letter dated January 8, 2020, informed appellant of the deficiencies of her claim. It advised her of the evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a January 6, 2020 letter, the employing establishment controverted the claim, contending that appellant had a preexisting nonwork-related condition that was related to her antibiotic medication for tendinitis.

[3] *Order Remanding Case*, Docket No. 21-0716 (issued December 10, 2021).

In response to the development letter on January 23, 2020, appellant reiterated the history of her injury on December 26, 2019, and described her resultant left heel, ankle, and calf conditions.

Appellant also submitted medical evidence. An undated report indicated that appellant was examined on December 26, 2019 by a physician assistant, and on January 24, 2020 by Dr. Bruce C. Kinzinger, a family practitioner, to ensure that her left ankle sprain had healed. It was further noted that appellant's diagnosis of left ankle sprain could have occurred at work as described by appellant, and was exacerbated by walking at work. Appellant's diagnosis was listed as left ankle sprain resulted in Achilles tendinitis that had improved as of January 24, 2020.

In a medical record and Form CA-17 report dated January 24, 2020, Dr. Kinzinger diagnosed sprain of other ligament of left ankle, initial encounter. In the January 24, 2020 medical record, he advised that appellant's left ankle sprain was due to a December 24, 2019 accident. On the Form CA-17 report of even date, Dr. Kinzinger noted a history of injury that on December 26, 2019 appellant was stretching and experienced left ankle pain. He indicated that appellant's left ankle sprain was due to injury.

By decision dated February 14, 2020, OWCP accepted that the December 26, 2019 employment incident occurred, as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident.

On February 19, 2021 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

In a July 17, 2020 bilateral heel x-ray report, Dr. Russell Gelman, a Board-certified diagnostic radiologist, provided an impression of a two-millimeter inferior calcaneal spur on the right side.

A July 20, 2020 prescription by Dr. Alan J. Kleiman, a podiatrist, diagnosed right foot tarsal tunnel syndrome and ordered physical therapy.

In an August 21, 2020 letter, Dr. Kleiman related that appellant was being treated for acute intractable right heel pain. He placed her off work and on complete rest through October 24, 2020.

A September 4, 2020 right ankle magnetic resonance imaging (MRI) scan report by Dr. Aimee Maceda, a diagnostic radiologist, provided impressions of minimally prominent vessels within the tarsal tunnel and no local mass or cyst; partial thickness low-grade tear plantar fascia extending 1.5 centimeters anterior to the origin, and subtle reactive edema in the calcaneus, without a fracture; Grade 1 strain *versus* reactive edema proximal abductor digiti minimi and flexor digitorum brevis muscles; findings consistent with chronic anterior talofibular ligament and calcaneofibular ligament injury; mild peroneus brevis and longus tendinopathy and no tear; and small tibiotalar and subtalar joint effusions.

In a September 11, 2020 report, Dr. Richard Bafford, Jr., a Board-certified vascular surgeon, noted that a duplex scan of the right lower extremity veins revealed no evidence of deep vein thrombosis of the right lower extremity; a greater saphenous vein that remained closed in the

proximal and mid-thigh status post radiofrequency ablation; and a patent left common femoral vein.

On October 5, 2020 Dr. Lemeneh Tefera, an emergency medicine specialist, noted appellant was evaluated for a fall, knee abrasion, and ankle pain. He discussed his findings on physical and x-ray examination. Dr. Tefera diagnosed sprain of anterior talofibular ligament of left ankle, initial encounter, and abrasion of right knee, initial encounter.

In an October 12, 2020 report, Dr. W. Scott Newcomb, a Board-certified podiatrist, diagnosed closed nondisplaced fracture of fifth metatarsal bone of left foot, initial encounter. He advised that appellant could not work from October 12, 2020 through her next office visit.

In an October 15, 2020 clinic office note, Dr. Jennifer R. Seifert, a podiatrist, advised that appellant would remain off work for approximately six weeks and immobilized in a boot brace until her next evaluation.

Appellant, through counsel, submitted a February 1, 2021 letter from Dr. Seifert. Dr. Seifert related a history of the alleged December 26, 2019 employment incident and appellant's medical treatment. She advised that appellant was totally disabled from work due to a left foot fracture which required immobilization, bone stimulator, and rest with elevation. Dr. Seifert noted that prior to appellant's left fifth metatarsal fracture, she was being actively worked up for right foot tarsal tunnel syndrome due to compensating for a previous left foot and ankle injury sustained at work. She believed that appellant developed plantar fasciitis and tarsal tunnel syndrome in the contralateral foot due to limping and from her initial left foot injury. Dr. Seifert opined that appellant's need for medical treatment for her bilateral foot conditions was due to her initial December 2019 injury.

On February 5, 2021 counsel, on behalf of appellant, again requested reconsideration of the February 14, 2020 decision and submitted additional medical evidence in support of the request.

Dr. Frank B. Sarlo, a Board-certified physiatrist, in an October 27, 2020 report, noted that an electromyogram/nerve conduction velocity (EMG/NCV) study of appellant's right lower extremity was essentially normal. He also noted that testing revealed no evidence to suggest an acute or chronic lumbosacral radiculopathy or plexopathy, entrapment of the posterior tibial nerve in the tarsal tunnel, and peripheral polyneuropathy. Additionally, testing revealed an amplitude of the response from the right extensor digitorum brevis that was a bit low and there was no clear clinical significance to this finding.

A partial diagnostic study report dated November 20, 2020 by Dr. Nicholas Georges, a Board-certified diagnostic radiologist, provided impressions of acute nondisplaced oblique fracture at the base of the fifth metatarsal with mild surrounding narrow edema; additional patchy areas of marrow edema and bone bruise noted involving the talar neck, anterior aspect of the talus, and cuboid; no evidence of lateral ligamentous tear, specifically the anterior talofibular ligament was intact; and peroneus longus and brevis tenosynovitis diffusely with a partial thickness tear of the peroneus brevis tendon noted immediately beyond the tip of the lateral malleolus; and an intact peroneus brevis tendon.

By decision dated February 25, 2021, OWCP denied appellant's reconsideration request, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

OWCP subsequently received an additional report dated February 11, 2021 from Dr. Seifert who diagnosed closed nondisplaced fracture of fifth metatarsal bone of left foot, initial encounter; plantar fasciitis, right; peroneal tendinitis, left leg; and tarsal tunnel syndrome of right side. She placed appellant off work until her next office visit.

In an April 12, 2021 letter, counsel contended that appellant's request for reconsideration was timely filed on February 5, 2021.

Also, on April 12, 2021 appellant, through counsel, filed a timely appeal to the Board from the February 25, 2021 nonmerit decision.[4] By order dated December 10, 2021, the Board set aside the February 25, 2021 decision, finding that appellant had filed a timely request for reconsideration. The Board remanded the case for OWCP to apply the correct legal standard for timely requests for reconsideration.

By decision dated February 7, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition, and the accepted December 26, 2019 employment incident.

By decision dated June 1, 2022, OWCP reissued the February 7, 2022 decision.

On June 13, 2022 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 11, 2022.

Thereafter, OWCP received physical therapy progress notes dated January 14, February 10, and March 8, 2021.

By decision dated December 22, 2022, OWCP's hearing representative affirmed the June 1, 2022 decision.

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 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

[4] *Id*.

[5] *Supra* note 2.

[6] *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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).

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 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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[9]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[10] 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 incident identified by the employee.[11]

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury.[12] The basic rule is that, a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.[13] When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own conduct.[14]

[7] *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *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).

[8] *V.L., supra* note 6; *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).

[9] *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).

[10] *C.H., supra* note 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).

[11] *V.L., supra* note 6; *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).

[12] *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

[13] *Id*.

[14] *A.M.*, Docket No. 18-0685 (issued October 26, 2018); *Mary Poller*, 55 ECAB 483, 487 (2004).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle condition causally related to the accepted December 26, 2019 employment incident.

The reports dated December 26, 2019 through October 12, 2020 of Drs. Davenport, Kleiman, Tefera, and Newcomb addressed appellant's bilateral ankle, right heel and knee conditions and work capacity, but did not offer an opinion on causal relationship. Medical reports lacking an opinion regarding causal relationship are insufficient to establish appellant's claim.[15] Thus, the Board finds that these reports are insufficient to establish appellant's claim.

Dr. Kinzinger, in a Form CA-17 report and medical record dated January 24, 2020, and an undated report, diagnosed left ankle sprain. In the January 24, 2020 Form CA-17 report, Dr. Kinzinger described the December 26, 2019 employment incident. He opined that appellant's left ankle sprain was due to injury. However, Dr. Kinzinger did not offer a rationalized medical opinion explaining how the mechanism by which the accepted December 26, 2019 employment incident would have resulted in her left ankle sprain. As noted above, the Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[16] In the undated letter, Dr. Kinzinger opined that appellant's left ankle sprain "could have" occurred at work on December 26, 2019 as described by appellant and was exacerbated by walking at work and resulted in her left ankle Achilles tendinitis. His opinion on causal relationship is speculative in nature. Medical opinions that are speculative or equivocal in character are of diminished probative value.[17] Further, Dr. Kinzinger did not provide medical rationale explaining the mechanism of how appellant's left ankle sprain was exacerbated by walking at work and resulted in her left ankle Achilles tendinitis.[18] His remaining January 24, 2020 medical record attributed appellant's left ankle sprain to a December 24, 2019 employment incident. However, Dr. Kinzinger's opinion is based on an inaccurate history of injury as the accepted work-related incident occurred on December 26, 2019. Medical reports based on an incomplete or inaccurate

[15] *See E.K.*, Docket 22-1130 (issued December 30, 2022); *L.K.*, Docket No. 21-1155 (issued March 23, 2022); *T.S.*, Docket No. 20-1229 (issued August 6, 2021); *J.M.*, Docket No. 19-1169 (issued February 7, 2020); *A.L.*, 19-0285 (issued September 24, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[16] *Id.*; *see also H.D.*, Docket No. 22-0419 (issued February 22, 2023).

[17] *See D.K.*, Docket No. 22-0988 (issued October 28, 2022); *D.B.*, Docket No. 18-1359 (issued May 14, 2019); *Ricky S. Storms*, 52 ECAB 349 (2001) (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

[18] *Supra* note 13.

history are of limited probative value.[19] For these reasons, Dr. Kinzinger's reports are insufficient to establish appellant's claim.

In a February 1, 2021 letter, Dr. Seifert opined that appellant was totally disabled from work due to a left fifth metatarsal fracture. She related appellant's history of injury on December 26, 2019 and noted that she developed right foot tarsal tunnel syndrome, and plantar fasciitis and tarsal tunnel syndrome in the contralateral foot due to limping and compensating for her initial work-related left foot and ankle injury. Dr. Seifert opined that appellant's need for medical treatment for her bilateral foot conditions was causally related to her initial December 2019 employment injury. To establish that appellant's bilateral foot conditions were causally related to the accepted December 26, 2019 employment incident as consequential injuries due to overcompensation from her left ankle injury, the medical evidence must first establish the primary injury.[20] While she provided an affirmative opinion suggestive of causal relationship, she did not offer a rationalized medical opinion explaining how the mechanism by which the accepted December 26, 2019 employment incident would have resulted in appellant's diagnosed left ankle conditions and need for medical treatment. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[21] Dr. Seifert's other reports dated October 15, 2020 and February 19, 2021 diagnosed closed nondisplaced fracture of fifth metatarsal bone of left foot, initial encounter; plantar fasciitis, right; peroneal tendinitis, left leg; and tarsal tunnel syndrome of right side. However, Dr. Seifert again did not offer a rationalized medical opinion explaining how the mechanism by which the accepted December 26, 2019 employment incident would have resulted in appellant's diagnosed left ankle conditions and resultant disability.[22]

Appellant also submitted Dr. Gelman's July 17, 2020 bilateral heel x-ray, Dr. Maceda's September 4, 2020 right ankle MRI scan, Dr. Bafford's September 11, 2020 right lower extremity scan, Dr. Sarlo's October 27, 2020 right lower extremity EMG/NCV study, and Dr. Georges' November 20, 2020 diagnostic study report. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.[23]

[19] *See S.B.*, Docket No. 21-0646 (issued July 22, 2022); *D.H.*, Docket No. 21-0537 (issued October 18, 2021); *T.B.*, Docket No. 17-0304 (issued May 16, 2017); *S.R.*, Docket No. 14-1086 (issued February 26, 2015) (medical conclusions based on an incomplete or inaccurate factual background are of limited probative value).

[20] *See M.N.*, Docket No. 22-0488 (issued February 15, 2023).

[21] *See J.C.*, Docket No. 22-0215 (issued February 14, 2023); *S.I.*, Docket No. 22-0538 (issued October 3, 2022); *S.Y.*, Docket No. 20-0470 (issued July 15, 2020); *T.J.*, Docket No. 19-1339 (issued March 4, 2020); *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

[22] *Id*.

[23] *E.K.*, *id*.; *N.B.*, Docket No. 20-0794 (issued July 29, 2022); *C.F.*, Docket No. 19-1748 (issued March 27, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

Additionally, appellant submitted an undated and unsigned Form CA-17 report. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.[24] Therefore, this report is also of no probative value and is insufficient to establish appellant's claim.

The remaining medical evidence of record consists of a report by a physician assistant, and progress notes by appellant's physical therapist. The Board has also held that certain healthcare providers such as physician assistants and physical therapists are not considered physicians as defined under FECA and, thus, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[25] As such, this evidence is insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical evidence to establish a left ankle condition causally related to the accepted December 26, 2019 employment incident, the Board finds that she 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 left ankle condition causally related to the accepted December 26, 2019 employment incident.

[24] *C.H.*, Docket No. 22-0219 (issued February 28, 2023); *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[25] Section 8101(2) 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) (September 2020); *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 M.M.*, Docket No. 20-1649 (issued January 4, 2023) (physician assistants are not considered physicians as defined by FECA); *A.F.*, Docket No. 22-1221 (issued December 8, 2022) (physical therapists are not considered physicians as defined by FECA).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 28, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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