United States Department of Labor
Employees' Compensation Appeals Board

M.M., Appellant	)	
and	)	**Docket No. 22-0719**
	)	**Issued: March 1, 2023**
DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Milwaukee, WI, 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:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 12, 2022 appellant filed a timely appeal from a March 28, 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 leg condition causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On October 2, 2020 appellant, then a 65-year-old public affairs specialist, filed an occupational disease claim (Form CA-2) alleging that she developed deep vein thrombosis (DVT) of the left leg due to the factors of her federal employment, including occasionally sitting in a vehicle for long distances without breaks. She explained that an initial diagnosis of DVT was related to a work-related trip in July 2016, but that she was ultimately diagnosed with chronic DVT in July 2020, which requires life-long anticoagulation treatment. Appellant noted that she first became aware of her condition on July 7, 2016 and realized its relation to her federal employment on July 20, 2020. She did not stop work.

A hospital report dated July 7, 2016, noted a diagnosis of DVT and a blood clot.

In a note dated July 13, 2016, Dr. Karen Hulbert, a Board-certified family medicine specialist, indicated that appellant was seen on July 7, 2016 for blood clots in her left leg. She opined that appellant could return to work on July 18, 2016.

In return-to-work notes dated October 17 and 24, 2016, Dr. Hulbert indicated that appellant could return to work with restrictions of long distance travel.

On June 8, 2020 Dr. Hulbert noted that appellant was diagnosed with acute left leg DVT after returning from work-related travel. She explained that appellant initially had provoked DVT due to a single incident of long-distance travel on July 7, 2016. However, Dr. Hulbert explained that the initial provoked DVT resulted in a chronic condition, and therefore was considered unprovoked DVT, which requires life-long anticoagulation treatment. She opined that appellant's provoked DVT was directly related to her work-related travel.

In a development letter dated October 28, 2020, 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 questionnaire for her completion. Appellant was afforded 30 days to submit the necessary evidence.

On November 27, 2020 appellant responded to OWCP's development questionnaire explaining that she was required to travel for work for up to two weeks at a time and no more than 12 hours on the weekend. She was diagnosed with DVT resulting from her July 2016 travel, but her physicians eventually diagnosed a chronic condition requiring life-long anticoagulation treatment. Appellant alleged that her employment-related activities of long-distance travel contributed and/or aggravated her chronic DVT as the only time the vehicle stopped was to get gasoline and food. She indicated that she had not engaged in any physical activities outside her federal employment except for walking.

In a medical report also dated November 27, 2020, Dr. Hulbert noted that appellant was to receive anticoagulation medical treatment as a result of her diagnosed DVT becoming a chronic condition.

By decision dated March 23, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that her diagnosed medical condition was causally related to the accepted factors of her federal employment.

On May 4, 2021 appellant requested reconsideration of OWCP's March 23, 2021 decision.

OWCP subsequently received additional medical evidence. In an April 29, 2021 medical report, Krystina Kienast, a nurse practitioner, reiterated medical findings from Dr. Hulbert's November 27, 2020 report.

By decision dated July 30, 2021, OWCP denied modification of its March 23, 2021 decision.

On August 23, 2021 appellant requested reconsideration.

Appellant submitted an August 12, 2021 narrative report from Dr. Charlene Vander Zanden, a Board-certified internal medicine specialist, who reiterated the findings of previous providers previous medical findings from her November 27, 2020 report.

By decision dated November 3, 2021, OWCP denied modification of its prior decision.

On December 21, 2021 appellant requested reconsideration of OWCP's November 3, 2021 decision.

By decision dated January 12, 2022, OWCP denied appellant's request for reconsideration, finding that she neither advanced a legal argument not previously considered nor submitted relevant new evidence.

On March 11, 2022 appellant, through counsel, requested reconsideration of OWCP's January 12, 2022 decision.

In support of her request for reconsideration, appellant submitted Dr. Vander Zanden's March 2, 2022 narrative report, who related that appellant's official duties required lengthy travel and noted that on July 7, 2016 she was in the passenger seat of the government vehicle without an opportunity to stop for stretching. Dr. Vander Zanden opined that appellant's swollen left leg was caused from prolonged sitting without breaks on July 7, 2016. She related that appellant would move around during personal travel, but was not afforded similar breaks during work-related travel. Dr. Vander Zanden also reiterated earlier findings that appellant's DVT is a chronic condition and requires life-long anticoagulation treatment.

By decision dated March 28, 2022, OWCP denied appellant's occupational disease claim, finding that Dr. Vander Zanden's narrative report was insufficient to establish causal relationship between appellant's diagnosed medical condition and the accepted factors of her federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, 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 period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of every compensation claim regardless of whether the claim is predicated on 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] A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.[8] 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).[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left leg condition causally related to the accepted factors of her federal employment.

In a March 2, 2022 report, Dr. Vander Zanden noted that on July 7, 2016 appellant developed a swollen leg as a result of prolonged sitting during work-related travel without

[3] *Id*.

[4] *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[5] *K.V.* and *M.E.*, *id*.; *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *R.G.*, Docket No. 19-0233 (issued July 16, 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] *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[8] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[9] *Id*.; *Victor J. Woodhams*, *supra* note 6.

stopping. She opined that such prolonged immobility without breaks caused a blood clot and provoked DVT. While Dr. Vander Zanden offered an opinion on causal relationship regarding a single incident in July 2016, appellant alleged an occupational disease claim. Moreover, she failed to identify the specific employment factors alleged by appellant and did not provide a pathophysiological explanation as to how those activities either caused or contributed to her diagnosed condition.[10] The Board has held that a medical opinion should reflect a correct history and offer a medically-sound and rationalized explanation by the physician of how the specific employment factors physiologically caused or aggravated the diagnosed conditions.[11] Furthermore, Dr. Vander Zanden concluded that, in 2019, after anticoagulation treatment, appellant's provoked DVT resulted in the chronic condition of unprovoked DVT. The Board, however, has held that 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.[12] It therefore finds that Dr. Vander Zanden's March 2, 2022 report is insufficient to meet appellant's burden of proof.

Similarly, appellant submitted Dr. Hulbert's June 8 and November 27, 2020 narrative reports, wherein she diagnosed provoked DVT in July 2016 and that, after medical treatment in 2019, she developed unprovoked DVT. However, Dr. Hulbert did not explain the pathophysiologic mechanism by which the accepted employment duties caused, aggravated, or accelerated appellant's unprovoked DVT condition.[13] Without explaining how prolonged immobility involved in appellant's employment duties caused or contributed to the diagnosed conditions, Dr. Hulbert's opinion on causal relationship is of limited probative value.[14] As such, her reports also lack the specificity and detail needed to establish that appellant's diagnosed condition was the result of the accepted factors of employment.[15]

The remaining medical evidence of record consists of a medical report dated July 13, 2016 and return to work notes dated October 17 and 24, 2016 from Dr. Hulbert, wherein she diagnosed blood clots and provided work restrictions. However, Dr. Hulbert did not offer an opinion on whether appellant's diagnosed medical condition was causally related to her employment factors. 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.[16] Appellant also submitted an April 29, 2021 report from Krystina Kienast, a nurse practitioner. The Board has held that certain healthcare providers such as nurse practitioners are not considered physicians as

[10] *K.B.*, Docket No. 19-1243 (issued February 21, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, *supra* note 7.

[11] *T.G.*, Docket No. 21-0175 (issued June 23, 2021); *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *see K.W.*, Docket No. 19-1906 (issued April 1, 2020).

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

[13] *Supra* note 10.

[14] *Supra* note 4.

[15] *T.C.*, Docket No. 19-0227 (issued July 11, 2019).

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

defined under FECA.[17] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. As such, this evidence is insufficient to establish appellant's burden of proof.

As there is no rationalized medical evidence explaining how appellant's employment duties caused or aggravated her diagnosed condition, she has not met her burden of proof.

Appellant may submit new evidence 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 leg condition causally related to the accepted factors of her federal employment.

[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. § 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 L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered a physician as defined under FECA).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 1, 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