United States Department of Labor
Employees' Compensation Appeals Board

T.L., Appellant	)	
and	)	**Docket No. 23-0962**
	)	**Issued: November 9, 2023**
U.S. POSTAL SERVICE, NETWORK DISTRIBUTION CENTER, Warrendale, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On July 3, 2023 appellant filed a timely appeal from a February 28, 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.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 26, 2022 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the February 28, 2023 decision, appellant submitted additional evidence. 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*.

FACTUAL HISTORY

On December 29, 2022 appellant, then a 51-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 2022 she sprained/strained her left calf while leaning over to pick up a package off the belt while in the performance of duty. She stopped work on December 26, 2022. Appellant submitted a December 26, 2022 narrative statement describing her injury, and a December 30, 2022 statement from G.B., Tour 2 Supervisor Distribution Operations, who confirmed that he was notified of appellant's pull in her calf muscle after lifting a parcel off the belt on December 26, 2022.

In an unsigned December 26, 2022 note, Dr. Percy Chiu, a Board-certified emergency medicine physician, noted that appellant was seen in an emergency room that day and was held off work until cleared by a workers' compensation physician.

A December 26, 2022 report, signed by Dr. Chiu on December 28, 2022, noted the history of appellant's work injury. An impression was related of left calf strain. Appellant's physical examination findings were noted as benign, except for tender palpation about the superior aspect of the calf. Based on appellant's history and physical examination, Dr. Chiu opined that there was low index of suspicion for any serious traumatic injury or infectious or vascular etiology of appellant's complaint, noting that x-rays of the left knee, tibia-fibula and venous doppler of the left lower extremity were also benign. He indicated that appellant had a "suspected calf muscle strain." Copies of the December 26, 2022 venous duplex scan left lower extremity and x-rays of the left tibia and fibula and left knee were provided, which reported negative findings.

In a December 30, 2022 duty status report (Form CA-17), K.K., a certified family nurse practitioner, diagnosed a left calf strain as a result of the December 26, 2022 employment incident and provided work restrictions. K.K. indicated that appellant could return to work on December 30, 2022.

OWCP continued to receive work restrictions from physician assistants and certified family nurse practitioners regarding appellant's work status.

The employing establishment indicated that appellant returned to full-time modified duty with restrictions on January 4, 2023, and full-time regular duty on January 13, 2023. It also challenged her claim.

In a January 24, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a February 13, 2023 report from a physician assistant, indicating a diagnosis of left lower leg muscle strain.

OWCP also received another narrative statement from appellant dated February 13, 2023, wherein she further described the circumstances surrounding her alleged injury.

By decision dated February 28, 2023, OWCP accepted that the December 26, 2022 incident occurred as alleged. However, it denied the claim, finding that appellant had not established a diagnosed medical condition in connection with the December 26, 2022 employment

incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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,[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 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 and place and in the manner alleged.[6] The second component is whether the employment incident caused a personal injury.[7]

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.[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 December 26, 2022 employment incident.

In a December 26, 2022 hospital note, Dr. Chiu related an impression of calf strain. He opined, based on appellant's history and physical examination, that there was low index of suspicion for any serious traumatic injury or infectious or vascular etiology of his complaint, noting that x-rays of the left knee, tibia-fibula and venous doppler of the left lower extremity were benign. Dr. Chiu thereafter concluded that appellant had a "suspected calf muscle strain." The

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

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

[5] *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).

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

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

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

Board has held that a medical opinion that is speculative or equivocal in nature is of diminished probative value.[9] The Board has explained that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.[10] Accordingly, this evidence is insufficient to establish appellant's claim.

Appellant submitted several reports from physician assistants and certified family nurse practitioners. However, the Board has long held that certain healthcare providers such as nurses and physician assistants are not considered "physician[s]" as defined under FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.

The record also contains diagnostic studies, including December 26, 2022 venous duplex scan left lower extremity and x-rays of the left tibia and fibula and left knee. The Board has held that diagnostic tests, standing alone, lack probative value.[12] Accordingly, these diagnostic studies are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted December 26, 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 December 26, 2022 employment incident.

[9] *C.D.*, Docket No. 20-0858 (issued November 30, 2020); *C.B.*, Docket No. 20-0464 (issued July 21, 2020).

[10] *A.R.*, Docket No. 19-1560 (issued March 2, 2020).

[11] 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 considered physicians as defined under FECA); *H.S.*, Docket No. 20-0939 (issued February 12, 2021) (physician assistants are not considered physicians as defined under FECA).

[12] *See H.K.*, Docket No. 23-0739 (issued September 27, 2023); *L.S.*, Docket No. 22-0023 (issued March 1, 2023); *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

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