United States Department of Labor
Employees' Compensation Appeals Board

B.P., Appellant	)	
and	)	**Docket No. 15-233**
	)	**Issued: May 21, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, East Orange, NJ, 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
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 10, 2014 appellant filed a timely appeal from an October 2, 2014 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 established a traumatic injury in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 7, 2014 appellant, then a 52-year-old medical support assistant, filed a recurrence (Form CA-2a) on March 6, 2014, due to a November 3, 2013 work injury.[2] She alleged that she was walking through a tunnel at work when she began to experience left ankle pain. Appellant stopped work on March 7, 2014 and returned on April 21, 2014.

In a March 6, 2014 disability status report, Dr. Thomas Cuomo, a Board-certified orthopedic surgeon, advised that appellant was disabled from work until April 17, 2014. On physical examination he found tenderness of the left ankle and a mild antalgic gait and diagnosed left foot contusion and left ankle sprain.

In a March 6, 2014 report, Dr. Thomas Helbig, a Board-certified orthopedic surgeon, advised that appellant had injured her left ankle in a fall at the employing establishment. He noted that he began treating her in December and that recently she began to experience a worsening of left ankle pain without any new trauma. Dr. Helbig also advised that appellant should return to physical therapy. In a March 27, 2014 report, he advised that she was experiencing left knee and ankle pain that marginally improved following an injection. Appellant was diagnosed with internal derangement of the left knee and sprained left ankle.

An April 21, 2014 report signed by a physician assistant advised that appellant was experiencing discomfort with knee range of motion, global tenderness to palpation and good ankle range of motion. Appellant was again diagnosed with internal derangement of the left knee and left ankle sprain.

In a May 12, 2014 memorandum, OWCP advised that appellant's claim was a new injury as opposed to a recurrence and would be developed as a new claim.

By letter dated May 20, 2014, OWCP notified appellant of the deficiencies in her claim and advised her of the type of evidence needed to establish her claim. She was also notified that her claim was being developed as a new injury.

In an April 21, 2014 disability status report, Dr. Helbig advised that appellant was able to return to work that day with restrictions including no excessive walking or heavy lifting. He diagnosed left ankle and knee strain.

In a May 29, 2014 report, Dr. Helbig noted seeing appellant for left knee and ankle pain. Appellant related that her initial injury occurred on November 1, 2013, she returned to work in late December 2013, and she had a recurrence of her problem in early March with increased pain and swelling in her left ankle and leg up to her knee. Dr. Helbig advised that appellant was currently working despite pain. He diagnosed left ankle sprain, left knee sprain, and internal derangement of the left knee with possible medial meniscus tear. Dr. Helbig indicated that he would try to help appellant with her OWCP claim.

[2] Although appellant initially filed a recurrence claim, the claim was adjudicated as a traumatic injury claim. Her Form CA-2a lists November 3, 2013. However, other evidence of record indicates that her injury took place on November 1, 2013.

In a June 2, 2014 statement, appellant advised that she originally injured herself on November 1, 2013 when she fell at the employing establishment. She noted that her current symptoms were a recurrence from that injury. Appellant requested that OWCP restore her leave used while she was disabled from work. She also submitted a June 3, 2014 response to an OWCP questionnaire. Appellant advised that she was on the employing establishment's premises walking through a tunnel when she had an onset of ankle pain and leg swelling.

By decision dated June 25, 2014, OWCP accepted the incident but denied appellant's claim because the evidence was insufficient to establish a diagnosed condition in connection to the March 6, 2014 work incident.

On July 3, 2014 appellant requested reconsideration. She submitted a June 12, 2014 report from Dr. Helbig who advised that she had a previous November 1, 2013 work-related left ankle sprain. Dr. Helbig noted that appellant had full range of motion with tenderness over the medial joint line and left ankle tenderness over the anterior talofibular ligament with full motion in dorsiflexion and mild limitation in plantar flexion with pain. He diagnosed left ankle sprain and internal derangement of the left knee. Dr. Helbig opined that appellant's condition was causally related to her November 1, 2013 injury. Appellant also submitted treatment reports previously of record.

By decision dated October 2, 2014, OWCP affirmed the denial of appellant's claim because the medical evidence was insufficient to establish that her condition was causally related to the March 6, 2014 work incident.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[5]

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. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

Rationalized medical opinion evidence is generally 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 factors identified by the claimant.[7]

ANALYSIS

On March 6, 2014 appellant alleged that she began to experience left ankle pain while walking through a tunnel at work. OWCP developed the present matter as a new injury claim. The evidence supports that the claimed incident occurred; therefore, the Board finds that the first component of fact of injury is established. However, the medical evidence is insufficient to establish that the employment incident on March 6, 2014 caused appellant's left ankle injury.

In his March 6, 2014 report, Dr. Helbig advised that appellant injured her left ankle in a fall at the employing establishment. He noted that he began treating appellant in December 2013 and that recently she began to experience a worsening of left ankle pain without any new trauma. This report is insufficient to establish causal relationship because Dr. Helbig did not address whether a March 6, 2014 work incident caused appellant's diagnosed condition. Instead, appellant reported no new trauma. Dr. Helbig did not otherwise reference the walking incident at work on March 6, 2014. In a May 29, 2014 report, he diagnosed left ankle sprain, left knee sprain, and internal derangement of the left knee. Dr. Helbig related that the initial injury occurred on November 1, 2013 and appellant sustained a recurrence of symptoms in March 2014 with increased pain and swelling in her left ankle and leg up to her knee. He stated that he would try to help her with her claim. While Dr. Helbig indicates that appellant's condition is employment related, it is unclear if he relates her condition to the November 1, 2013 injury, which is not presently before the Board, or to the March 6, 2014 incident. Furthermore, he did not offer any explanation as to how the March 6, 2014 incident caused or aggravated an injury.

In his June 12, 2014 report, Dr. Helbig offered diagnoses and advised that appellant had a prior November 1, 2013 work-related left ankle sprain. He opined that appellant's condition was causally related to her November 1, 2013 injury. This report is insufficient to establish appellant's claim because it does not identify the March 6, 2014 incident as a cause of a diagnosed condition. In his March 27, 2014 report, Dr. Helbig advised that appellant was experiencing left knee and ankle pain that marginally improved following an injection. Appellant was diagnosed with internal derangement of the left knee and sprained left ankle. This report did not provide an opinion on causal relationship; therefore, it is insufficient to discharge appellant's burden of proof. The Board has held that medical opinions which do not state an opinion on causal relationship are of little probative value.[8] Other reports submitted by Dr. Helbig are also insufficient to establish causal relationship because they do not address causal relationship.[9]

[7] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[9] *Id.*

Likewise, Dr. Cuomo's March 6, 2014 report is not sufficient to discharge appellant's burden of proof because it does not address how the March 6, 2014 work incident caused or aggravated a diagnosed condition. Appellant also submitted evidence from a physician's assistant. However, this is not considered probative medical evidence as physician assistants are not considered physicians as defined under FECA.[10] Thus, records from physician assistants are insufficient to establish the claim.

Consequently, appellant has submitted insufficient medical evidence to establish her claim. Causal relationship is a medical question that must be established by probative medical opinion from a physician.[11] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.[12] Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

Appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury on March 6, 2014.

[10] Under FECA, a "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). *See Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[11] *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

[12] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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