United States Department of Labor
Employees' Compensation Appeals Board

I.M., Appellant	)	
and	)	**Docket No. 22-1287**
	)	**Issued: May 23, 2023**
U.S. POSTAL SERVICE, POST OFFICE, New York, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 6, 2022 appellant filed a timely appeal from a March 14, 2022 merit decision and an April 25, 2022 nonmerit 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]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted January 11, 2022 employment incident; and

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the April 25, 2022 decision, OWCP received additional evidence. 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*.

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 2, 2022 appellant, then a 27-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2022 she sustained an injury when a rack/gate fell on her foot and toe while in the performance of duty. She stopped work on January 11, 2022.

In support of her claim, appellant submitted an undated form report and January 11, 2022 visit notes from Molly Wypyski, a registered nurse, diagnosing an injury of the left foot.

A February 3, 2022 form report from Dr. Rafael Abramov, a Board-certified physical medicine and rehabilitation specialist, noted that appellant was unable to work due to a work-related accident on January 11, 2022 and held her off work until February 17, 2022. He referred her for a magnetic resonance imaging (MRI) scan and to an orthopedic specialist.

In a February 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 afforded her 30 days to submit the necessary evidence.

Thereafter, appellant submitted a February 9, 2022 MRI scan report of the left foot, noting an impression of first metatarsophalangeal joint space narrowing with effusion, chondral surface erosion and cortical thinning with subcortical reactive bone marrow edema at the convexity of the first metatarsal head, lateral greater than medial first metatarsophalangeal spur formation involving the sesamoid bones, a transverse defect separating the sesamoid in the tibial sesamoid, edema/fluid within the first digital interspace compatible with intermetatarsal bursitis at the level of the metatarsophalangeal joint, and marrow edema involving the distal phalanx.

In a February 17, 2022 form report, Dr. Abramov reiterated that appellant was unable to work due to a January 11, 2022 work accident and continued to hold her off work until February 23, 2022.

By decision dated March 14, 2022, OWCP accepted that the January 11, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the accepted January 11, 2022 employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a February 23, 2022 order from Dr. Siddhartha Sharma, a Board-certified foot and ankle surgeon, requesting a controlled ankle motion boot for treatment of appellant's left foot.

A March 4, 2022 MRI scan report of appellant's left foot noted an impression of a nondisplaced oblique fracture of the medial sesamoid and advanced cartilage loss of the first metatarsophalangeal joint with moderate joint effusion.

In a March 9, 2022 form report, Dr. Sharma noted a date of injury of January 11, 2022 and a diagnosed left ankle metatarsalgia and a sprain of an unspecified ligament. He held appellant off work until March 23, 2022.

On April 19, 2022 appellant requested reconsideration of the March 14, 2022 decision.

By decision dated April 25, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that, while a new diagnosis was provided in Dr. Sharma's March 9, 2022 form, it did not include a history of injury or other details that could establish that the diagnosis occurred in connection with the claimed injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[3] 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,[4] 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.[5] 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.[6]

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, 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.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence. 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

[3] *Supra* note 1.

[4] *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).

[5] *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).

[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).

[7] *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted January 11, 2022 employment incident.

In support of her claim, appellant submitted February 3 and 17, 2022 reports from Dr. Abramov, merely indicating that she was unable to work due to a work-related accident on January 11, 2022. The Board has held that a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition.[9] This evidence is therefore insufficient to establish a medical diagnosis.[10]

Appellant also submitted January 11, 2022 visit notes from Ms. Wypyski, a registered nurse, diagnosing an injury of the left foot. The Board has long held that certain healthcare providers such as nurses are not considered "physician[s]" as defined under FECA and thus their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[11] Accordingly, the January 11, 2022 report is insufficient to establish a medical diagnosis.[12]

The remaining medical evidence of record consists of a February 9, 2022 MRI scan report. The Board has held that diagnostic tests, standing alone, lack probative value.[13] Accordingly, the February 9, 2022 report is also insufficient to establish a medical diagnosis.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted January 11, 2022 employment incident, the Board finds that appellant has not met her burden of proof.

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[8] *K.H.*, Docket No. 22-0489 (issued August 2, 2022); *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *D.R.*, Docket No. 22-0471 (issued June 27, 2022); *M.E.*, Docket No. 22-0091 (issued May 6, 2022); *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).

[9] *A.R.*, Docket No. 19-1560 (issued March 2, 2020); *V.B.*, Docket No. 19-0643 (issued September 6, 2019).

[10] *Id*.

[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); *H.K.*, Docket No. 19-0429 (issued September 18, 2019); *K.W.*, 59 ECAB 271, 279 (2007); *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).

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

[13] *D.D.*, Docket No. 20-0626 (issued September 14, 2020); *B.M.*, Docket No. 19-1341 (issued August 12, 2020).

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.[14] OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.[15] One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.[16] A timely application for reconsideration, including all supporting documents, must set forth arguments, and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.[17] When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.[18]

ANALYSIS -- ISSUE 2

The Board finds that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On reconsideration appellant submitted a March 9, 2022 disability evaluation from Dr. Sharma noting a date of injury of January 11, 2022 and a diagnosing left ankle metatarsalgia and a sprain of an unspecified ligament. As this report addresses the underlying issue of whether a medical condition had been diagnosed in connection with the accepted January 11, 2022 employment incident, it constitutes relevant and pertinent new evidence that was not previously considered. Therefore, the Board finds that the submission of this evidence requires reopening of appellant's claim for merit review pursuant to the third requirement of 20 C.F.R. § 10.606(b)(3).[19]

[14] This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application. 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.607.

[16] *Id*. § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. *Supra* note 11 at Chapter 2.1602.4 (February 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees Compensation System (iFECS). *Id*. at Chapter 2.1602.4b.

[17] *Id*. at § 10.606(b)(3).

[18] *Id*. § 10.608(a), (b).

[19] *Id*. at § 10.606(b)(3); *see also J.T.*, Docket No. 20-1301 (issued July 28, 2021); *M.J.*, Docket No. 20-1067 (issued December 23, 2020).

Consequently, the Board will set aside OWCP's April 25, 2022 decision and remand the case for an appropriate merit decision on appellant's claim.[20]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted January 11, 2022 employment incident. The Board further finds that OWCP improperly denied her request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed. The April 25, 2022 decision is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 23, 2023
Washington, DC

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

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

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

[20] *F.K.*, Docket No. 21-0998 (issued December 29, 2021).