

**United States Department of Labor
Employees' Compensation Appeals Board**

S.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Amherst, OH, Employer**

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**Docket No. 12-1436
Issued: December 20, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 26, 2012 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated January 5, 2012. Pursuant to the Federal Employees' Compensation Act¹ (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 established that she sustained a traumatic injury in the performance of duty on December 6, 2008, as alleged.

FACTUAL HISTORY

On December 6, 2008 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim alleging that on that date she slipped on black ice and injured the right side of her shin, buttock and lower back.

¹ 5 U.S.C. § 8101 *et seq.*

In a December 6, 2008 emergency room report, a physician's assistant noted that appellant fell on ice that day and injured her lower back. In December 6, 2008 emergency room reports, the physician's assistant and Jaime Meade, a nurse practitioner, diagnosed low back contusion. Appellant was seen for injuries sustained as the result of her slipping and falling on a patch of ice that day. It noted that she injured her lower right buttock, right shin and right lower back as the result of the fall.

A December 6, 2008 x-ray interpretation by Dr. Sathyajit M. Kulasingham, a Board-certified diagnostic radiologist, diagnosed moderate lower lumbar spine discogenic degenerative changes.

In a December 9, 2008 provider report from Community Health Partners Occupational Health,² appellant was diagnosed with lumbar contusion and cervical sprain. It noted that she injured herself when she fell, landed on her buttocks and hit her right leg. An injury date of December 6, 2008 was listed and a check mark was made that it was job related.

A December 16, 2008 provider treatment record form³ noted that appellant sustained an employment injury on December 6, 2008 and noted a diagnoses of back contusion and cervical sprain.

In a December 16, 2008 duty status Form CA-17, appellant was diagnosed with lumbar and cervical sprain and she was released to full-duty work on December 17, 2008.⁴ The date of injury was listed as December 6, 2008.

In a November 21, 2011 letter, OWCP noted the evidence submitted by appellant and informed her that it was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide the requested information.

By decision dated January 5, 2012, OWCP denied appellant's claim on the grounds that she failed to establish fact of injury. It found that she failed to submit any medical evidence diagnosing a medical condition as a result of the accepted December 6, 2008 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing 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; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any

² The signature on the form is illegible and there is no indication that the individual was a physician.

³ The signature on the form is illegible and there is no indication that the individual was a physician.

⁴ There was no signature on the form, but the specialty was noted as occupational medicine.

⁵ *Supra* note 1.

disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁸ First, 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.⁹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

ANALYSIS

Appellant filed a traumatic injury claim on December 6, 2008 alleging that on that day she sustained injuries to her buttocks, lower back and right leg as a result of slipping and falling on ice. OWCP accepted that this incident occurred as alleged. However, it found that appellant had not submitted sufficiently detailed medical evidence to establish a causal relationship between her accepted employment incident and a diagnosed medical condition. The Board finds that appellant failed to meet her burden of proof as she failed to submit any rationalized medical opinion evidence explaining how her back contusion and cervical sprain were causally related to the employment incident.

In support of her claim, appellant submitted medical reports signed by a nurse and a physician's assistant. Neither a nurse nor physician's assistant are considered a physician under FECA.¹¹ As these reports were not signed by the physician they have no probative value in establishing appellant's claim.

Appellant also submitted December 9 and 16, 2008 reports and duty status reports diagnosing low back contusion, lumbar and cervical sprains. The signatures on the reports are illegible and there is no indication that individuals authoring these reports were physicians. Thus, these reports do not constitute probative medical opinion evidence. The Board has found that reports lacking proper identification, such as reports with illegible signatures, do not constitute probative medical evidence.¹²

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁷ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

⁹ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

¹¹ 5 U.S.C. § 8101(2). See *E.H.*, Docket No. 08-1862 (issued July 8, 2009); *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹² See *R.M.*, 59 ECAB 690 (2008) (medical reports lacking proper identification, such as an illegible signature or

The only medical document submitted by appellant signed by a physician was the x-ray report from Dr. Kulasingham. This x-ray interpretation did not provide a history of injury or the cause of the diagnosed condition. Thus, this report does not provide probative medical evidence in support of appellant's claim.

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 failed to establish that she sustained an injury in the performance of duty on December 6, 2008, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 5, 2012 is affirmed.

Issued: December 20, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

unsigned notes, do not constitute probative medical evidence). *See also* 5 U.S.C. § 8101(2).