

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

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**B.K., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Colorado Springs, CO, Employer**

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**Docket No. 13-481  
Issued: May 20, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 26, 2012 appellant filed a timely appeal from an August 28, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying a traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 that she sustained a traumatic injury in the performance of duty as alleged.

On appeal, appellant asserts that she was wrongly instructed not to complete a claim development questionnaire. She clarifies that she did not claim a new injury but an aggravation of a preexisting condition. Appellant notes that she is unsure of the exact mechanism of injury, though she may have twisted or lifted wrong.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

On July 24, 2012 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 19, 2012 she sustained “[n]umbness of the left leg.” She stopped work on July 24, 2012 and returned to full duty on July 31, 2012.<sup>2</sup>

In a July 26, 2012 letter, OWCP advised appellant of the evidence needed to establish her claim, including her factual statement describing the specific work factors alleged to have caused left leg numbness, and a report from her attending physician explaining how and why those factors would cause the claimed injury. It afforded appellant 30 days in which to submit such evidence.

Appellant submitted reports dated from July 24 to August 13, 2012 by Aaron White, a physician’s assistant, relating appellant’s account of left leg numbness starting on July 19, 2012 with no known mechanism of injury.<sup>3</sup> Mr. White’s reports were not reviewed or signed by a physician.

In August 1 and 2, 2012 letters, the employing establishment controverted appellant’s claim, asserting that when she reported the incident, she told her supervisor that she did not know how she was injured.

By decision dated August 28, 2012, OWCP denied appellant’s claim on the grounds that fact of injury was not established. It found that she did not submit sufficient evidence substantiating that she experienced an injurious incident on July 19, 2012. OWCP noted that the medical evidence was of no probative value as the reports were prepared by a physician’s assistant but not signed by a physician.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> An OWCP continuation of pay nurse noted that appellant returned to full duty on July 31, 2012 and closed the case on August 2, 2012.

<sup>3</sup> Appellant participated in physical therapy from July 24 to August 8, 2012. The therapy notes submitted were not reviewed or signed by a physician.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>6</sup> 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.<sup>7</sup>

### ANALYSIS

Appellant claimed that she sustained “[n]umbness of the left leg” on July 19, 2012. OWCP denied appellant’s claim as she did not identify a work incident or employment duties that she believed caused her condition. On her claim form, appellant did not provide any information as to how she was injured. The employing establishment also contended that appellant could not identify any mechanism of injury. As appellant did not submit evidence demonstrating that she experienced an occupational incident on July 19, 2012, she has not met her burden of proof in establishing fact of injury.<sup>8</sup>

The Board notes that appellant also failed to submit any probative medical evidence. She provided reports from Mr. White, a physician’s assistant. As these reports were not signed by a physician, they are of no probative medical value as physician’s assistants do not qualify as physicians under FECA.<sup>9</sup>

The Board notes that OWCP advised appellant by July 26, 2012 letter of the need to submit evidence establishing how she was injured, and her physician’s opinion explaining how the identified work factors would cause the claimed left leg numbness. However, appellant did not submit such evidence. Therefore, she failed to meet her burden of proof.

On appeal, appellant asserts that she was wrongly instructed not to complete a claim development questionnaire. She clarifies that she did not claim a new injury but an aggravation of a preexisting condition. Appellant notes that she is unsure of the exact mechanism of injury, but she may have twisted or lifted wrong. However, as stated above, she did not submit sufficient evidence to establish fact of injury.

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.

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<sup>6</sup> Gary J. Watling, 52 ECAB 278 (2001).

<sup>7</sup> Deborah L. Beatty, 54 ECAB 340 (2003).

<sup>8</sup> Gary J. Watling, *supra* note 6.

<sup>9</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 5 U.S.C. § 8101(2). Section 8101(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. *J.T.*, Docket No. 12-1903 (issued February 15, 2013). See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

**CONCLUSION**

The Board finds that appellant has not established that she sustained a traumatic injury in the performance of duty as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 28, 2012 is affirmed.

Issued: May 20, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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