

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
North Metro, GA, Employer)

**Docket No. 14-1829
Issued: February 6, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 18, 2014 appellant filed a timely appeal from an August 6, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 met her burden of proof to establish that she sustained an injury in the performance of duty on June 14, 2013, as alleged.

On appeal, appellant contends that OWCP considered incorrect documentation in denying her claim.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 21, 2013 appellant, then a 42-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries in the performance of duty on June 14, 2013. She submitted a position description and pay rate information in support of her claim. Appellant's CA-1 form indicated that she felt a tightening around her shoulders and neck, low back, pain in right hip, and in right arm and elbow.

In a July 2, 2013 letter, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant timely submitted a July 30, 2013 narrative statement indicating that she injured herself while pulling defective dock plates and lifting defective trailer doors in the performance of duty.

In a July 19, 2013 report, Ruben Alexander, a physician assistant, diagnosed bilateral leg "joint pain" and "low back pain -- lumbago." He indicated that the pain in appellant's knees, lower legs, and lower back had become progressively worse.

By decision dated August 9, 2013, OWCP accepted that the June 14, 2013 incident occurred as alleged but denied the claim on the basis that appellant failed to submit evidence containing a medical diagnosis in connection with the injury or events therefore concluding that she had not established fact of injury.

On July 22, 2014 appellant requested reconsideration and submitted a narrative statement and policies and procedures regarding employment-related injuries.

By decision dated August 6, 2014, OWCP denied modification of its August 9, 2013 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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 timely filed within the applicable time limitation period of FECA, that an injury³ 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

² *Id.*

³ OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁴ See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her condition relates to the employment incident.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

OWCP has accepted that the employment incident of June 14, 2013 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained injuries as a result. The Board finds that she did not meet her burden of proof to establish that she sustained injuries related to the June 14, 2013 employment incident.

In support of her claim, appellant submitted a July 19, 2013 report from Mr. Alexander, a physician assistant, who diagnosed bilateral leg “joint pain” and “low back pain -- lumbago” and indicated that the pain in her knees, lower legs, and lower back had become progressively worse. The Board finds that this report does not constitute competent medical evidence as it does not contain rationale by a physician relating appellant’s disability to her employment.⁷ Physician assistants are not physicians as defined by FECA. Therefore, Mr. Alexander’s report is insufficient to establish appellant’s claim.⁸

Appellant also submitted policies and procedures regarding employment-related injuries. These documents do not constitute competent medical evidence as they do not contain rationale by a physician relating her disability to her employment.⁹ As such, the Board finds that appellant did not meet her burden of proof with these submissions.

⁵ *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ See 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.” See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

⁸ *John D. Williams*, 37 ECAB 238 (1985).

⁹ See *supra* notes 7; *id.*

On appeal, appellant contends that OWCP considered incorrect documentation in denying her claim. Based on the Board's findings for the reasons stated above, her arguments are not substantiated.

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 that she sustained an injury in the performance of duty on June 14, 2013, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the August 6, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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