United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 14-783**
	)	**Issued: July 1, 2014**
U.S. POSTAL SERVICE, POST OFFICE, Clarksville, TN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2014 appellant timely appealed the January 23, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied her traumatic injury claim. 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 the claim.[2]

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on December 14, 2013.

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] The record on appeal contains evidence received after OWCP issued its January 23, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP rendered its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

FACTUAL HISTORY

On December 14, 2013 appellant a 40-year-old rural carrier associate, was involved in an employment-related motor vehicle accident (MVA). She reported having been rear-ended by another motorist. Appellant stopped work on December 14, 2013. When her December 17, 2013 traumatic injury claim (Form CA-1) was forwarded to OWCP there were no associated medical records. The CA-1 indicated that appellant first received medical care on December 14, 2013 at Gateway Medical Center.

By letter dated December 23, 2013, OWCP acknowledged receipt of the claim and explained the five basic elements to establishing entitlement under FECA. Additionally, OWCP advised appellant that it had not received any medical evidence regarding her claimed injury. OWCP afforded appellant 30 days to provide a narrative medical report from a qualified physician.

Appellant resumed her regular duties on December 23, 2013.

OWCP subsequently received a December 16, 2013 work excuse from Women First, PLLC, which stated that appellant had been examined that day and she was to be excused from work until December 23, 2013. The note indicated that appellant should not drive while taking pain medication. There was no reported diagnosis or history of injury. Also, the health care provider's signature is illegible.

In a December 23, 2013 attending physician's report (Form CA-20), Darlene M. Adams, a certified physician's assistant (PA-C), diagnosed acute neck and back strain. She noted that appellant's vehicle was hit while she was delivering mail on December 14, 2013. Ms. Adams indicated that there were no fractures on x-ray. Additional findings included acute soft tissue strain (muscle pain). Appellant was first examined on December 16, 2013 and her treatment included physical therapy and a muscle relaxant. Ms. Adams indicated that appellant had not yet been advised that she could return to work.

A December 23, 2013 duty status report (Form CA-17) noted a diagnosis of acute back sprain due to a December 14, 2013 MVA. The form indicated that appellant had not yet been advised to resume work. The health care provider's signature is illegible.

In a January 23, 2014 decision, OWCP denied appellant's claim because she failed to establish a medical diagnosis related to the accepted employment incident. OWCP explained that the evidence provided by the physician assistant was not sufficient under FECA.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[3]

[3] 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

To determine if 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. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[4] The second component is whether the employment incident caused a personal injury.[5]

Certain health care providers such as physician assistants, nurse practitioners, physical therapists and social workers are not considered "physician[s]" as defined under FECA.[6] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[7]

ANALYSIS

The Board finds that OWCP properly found that Ms. Adams' December 23, 2013 diagnosis of acute neck and back strain would not qualify as medical opinion. She is a physician's assistant, and therefore, not qualified to offer a medical opinion under FECA. As well, a CA-17 was submitted that noted a diagnosis of acute back sprain; however, the provider's signature is illegible.

Appellant argued that OWCP's January 23, 2014 decision was the first paperwork she received with regard to her claim. As a result, she was unaware that a physician's assistant's opinion would not suffice.[8] Appellant also indicated that she has since resubmitted her paperwork with a medical doctor's signature. While the record includes additional information,

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[6] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[7] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician's assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[8] OWCP's December 23, 2013 developmental letter advised appellant that nurse practitioners and physicians' assistants were not considered qualified physicians under FECA unless the medical report was countersigned by a physician. The December 23, 2013 correspondence was sent to appellant's address of record, which is the same address associated with the current appeal. In the absence of evidence to the contrary, it is presumed that a notice mailed in the ordinary course of business was received in due course by the intended recipient. This presumption is commonly referred to as the "mailbox rule." It arises when the record reflects that the notice was properly addressed and duly mailed. *Kenneth E. Harris*, 54 ECAB 502, 505 (2003). There is no indication that OWCP's December 23, 2013 development letter was returned as undelivered.

that evidence is not currently before the Board.[9] OWCP properly denied appellant's claim because she failed to establish an employment-related medical condition.

CONCLUSION

Appellant has not established that she sustained an injury in the performance of duty on December 14, 2013.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 1, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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

[9] Because this evidence was not part of the record when OWCP issued its January 23, 2014 decision, the Board is precluded from considering it for the first time on appeal. *See supra* note 2.