United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 15-1431**
	)	**Issued: November 10, 2015**
U.S. POSTAL SERVICE, WICKER PARK POST OFFICE, Chicago, IL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 18, 2015 appellant filed a timely appeal of an April 30, 2015 merit 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 the case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury on December 21, 2014 in the performance of duty.

FACTUAL HISTORY

On December 22, 2014 appellant, then a 32-year-old temporary city carrier, filed a claim for traumatic injury (Form CA-1) alleging that on December 21, 2014 while delivering mail she tripped and landed on her hand. She stated that her left hand was swollen.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Following OWCP's April 30, 2015 decision, appellant submitted additional medical evidence. As OWCP did not consider this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

In support of her claim, appellant submitted an illegible disability certificate received on December 30, 2014. She also submitted a duty status report dated December 23, 2014 allegedly from a chiropractor but whose signature was illegible. The chiropractor diagnosed left wrist sprain and indicated that appellant could work with her right hand only. Appellant also submitted notes dated January 8 and March 5, 2015 from a physical therapist, Luis Maldonada. Dr. Dulce Vazquez, a chiropractor, examined appellant on February 6, 2015 found that she could work with restrictions.

In a note dated January 14, 2015, Dr. Aleksandra Goldvekht, a Board-certified physiatrist, listed appellant's date of injury as December 21, 2014 and stated that she had slipped and fallen on a step, falling forward onto her left hand. He diagnosed left hand injury and stated that appellant could perform light duty. Mr. Goldvekht examined appellant on February 18, 2015 and again diagnosed left hand injury.

In a letter dated March 20, 2015, OWCP requested additional factual and medical evidence in support of appellant's traumatic injury claim. Dr. Adrian Zaragoza, a chiropractor, examined appellant on January 8, February 6, 18, and 27, as well as March 3, 2015 and reviewed x-rays of appellant's left wrist which were negative for any fracture or dislocation.

Dr. Goldvekht completed an attending physician's report (Form CA-20) diagnosing left hand injury and indicating with a checkmark "yes" that the condition was caused or aggravated by an employment activity.

By decision dated April 30, 2015, OWCP found that appellant, a federal employee, had filed a timely claim and established that the employment incident occurred as alleged. However, it denied appellant's traumatic injury claim finding that she had failed to meet her burden of proof to submit medical evidence establishing a diagnosed medical condition resulting from the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

OWCP defines 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."[6] To determine

[3] 5 U.S.C. §§ 8101-8193.

[4] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] 20 C.F.R. § 10.5(ee).

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. First the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.[7] 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.[8]

ANALYSIS

The Board finds that appellant has failed to submit the necessary medical opinion to establish a traumatic injury on December 21, 2014 in the performance of duty.

Appellant has submitted a consistent factual description of slipping and falling in the performance of duty on December 21, 2014. In support of an injury resulting from this employment incident, appellant submitted notes from Dr. Goldvekht including a description of her fall on December 21, 2014. Dr. Goldvekht did not provide the necessary diagnosis of a medical condition resulting from the December 21, 2014 fall. He merely diagnosed a left wrist injury. The Board has held that a physician must identify a specific medical condition in order to support a traumatic injury claim.[9] Because the medical evidence fails to establish that appellant had been diagnosed with a specific medical condition related to the December 21, 2014 employment incident, the Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty.

Appellant also submitted reports from two chiropractors, Dr. Vazquez and Dr. Zaragoza. Neither chiropractor diagnosed a spinal subluxation based on a review of an x-ray. Section 8101(2) of FECA[10] provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray to exist. Without a diagnosis of spinal subluxation from an x-ray, a chiropractor is not considered a physician under FECA and his or her opinion does not constitute competent medical evidence.[11] As neither Dr. Vazquez nor Dr. Zaragoza, provided a diagnosis of a spinal subluxation from an x-ray, these chiropractors are not physicians under FECA and their reports do not constitute competent medical evidence and cannot meet appellant's burden of proof to establish her traumatic injury claim.

Appellant also submitted notes from a physical therapist, Mr. Maldonada. These notes are immaterial as physical therapists are also not considered physicians under FECA.[12] As he is not a physician, Mr. Maldonada's notes do not constitute competent medical evidence and cannot meet appellant's burden of proof to establish her traumatic injury claim.[13]

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[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *J.Z.*, 58 ECAB 529 (2007).

[9] *C.S.*, Docket No. 14-2065 (issued February 11, 2015); *M.O.*, Docket No. 14-1902 (issued January 28, 2015).

[10] 5 U.S.C. §§ 8101-8193, 8101(2).

[11] *F.D.*, Docket No. 15-0868 (issued August 10, 2015).

[12] *R.S.*, Docket No. 15-0988 (issued August 12, 2015).

[13] *Supra* note 11.

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 failed to meet her burden of proof to establish that she sustained a traumatic injury on December 21, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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