United States Department of Labor
Employees' Compensation Appeals Board

M.E., Appellant	)	
and	)	**Docket No. 17-1857**
	)	**Issued: February 2, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Munford, TN, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 31, 2017 appellant, filed a timely appeal from an August 18, 2017 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 this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a right knee and right elbow injury causally related to an accepted June 17, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] With her request for an appeal, appellant submitted additional evidence. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from considering this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On June 20, 2017 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1), alleging that, while delivering mail to a residence on June 17, 2017, she was attacked by two dogs who chased her causing her to fall in the road injuring her right knee and right elbow. She stopped work on June 17, 2017. On the CA-1 form, appellant's supervisor noted that appellant was injured in the performance of duty on June 17, 2017 and that she indicated that she was first notified of the injury on June 20, 2017. Appellant stopped work on June 17, 2017. Her supervisor further noted that the medical reports showed appellant disabled for work.

Appellant was treated by a physician assistant on June 17, 2017 for laceration of the right elbow, left knee, and right knee. She reported that her injury occurred on June 17, 2017 and was caused by a fall. Findings on examination revealed bilateral knee swelling and superficial laceration of the right knee with no bone injury. Appellant performed wound repair with eight sutures. X-rays of the knees revealed mild bony spurring of the right patella. The physician assistant diagnosed laceration of the right knee without foreign body, unspecified open wound, right lower leg, abrasion of the right elbow, and pain in knees. She prescribed Keflex and a topical ointment. The physician assistant returned appellant to work light duty. On June 30, 2017 appellant returned and presented with skin sores of the right lower extremity which began on June 17, 2017. Findings on examination revealed a limp favoring right lower extremity and a healing wound on the right knee and leg. The physician assistant diagnosed laceration without foreign body, right lower leg, subsequent encounter. She returned appellant to sedentary work with additional restrictions.

In a report dated June 24, 2017, a nurse practitioner treated appellant for suture removal. Findings on examination revealed a healing laceration of the right knee. He removed all eight sutures. The nurse practitioner diagnosed encounter for removal of sutures and returned appellant to work with restrictions. On June 28, 2017 appellant's right knee was treated again by him. Findings revealed reduced right knee active range of motion and healing laceration of the right knee. The nurse practitioner diagnosed laceration without foreign body and right knee. He prescribed Keflex and continued work restrictions.

OWCP, in a July 12, 2017 development letter, advised appellant that her claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It noted that her claim was administratively handled to allow limited medical payments, but the merits of the claim had not been formally adjudicated. OWCP advised that, because appellant had not returned to work in a full-time capacity, her claim would be formally adjudicated. It requested that she submit additional factual and medical information including a comprehensive medical report from her treating physician addressing causal relationship. OWCP noted that medical evidence must be submitted by a qualified physician and that a physician assistant and a nurse practitioner were not considered physicians under FECA. It allotted her 30 days within which to submit the requested information.

Appellant submitted a report from a physician assistant dated July 7, 2017, who noted that she presented with healing skin sores on the right lower extremity. She reported that the sores were the result of a work injury. Findings on examination revealed hip/thigh and right

knee lesions. Appellant diagnosed laceration without foreign body, right knee. The physician assistant returned her to work without restrictions on July 8, 2017.

In an August 18, 2017 decision, OWCP denied the claim finding that appellant failed to submit medical evidence establishing that a medical condition was diagnosed in connection with the accepted work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish 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 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. 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[5]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[6]

ANALYSIS

It is undisputed that on June 17, 2017 appellant was working as a mail carrier, and while delivering mail to a residence, she was chased by two dogs and fell in the street. However, the Board finds that she failed to submit sufficient medical evidence to establish that this work incident caused or aggravated her right knee and right elbow condition. In a letter dated July 12, 2017, OWCP requested that appellant submit a comprehensive report from her treating physician which included a reasoned explanation as to how the accepted work incident had caused her claimed injury.

[3] *Supra* note 1.

[4] *Gary J. Watling*, 52 ECAB 357 (2001).

[5] *T.H.*, 59 ECAB 388 (2008).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

Appellant submitted reports from a physician assistant dated June 17 to July 7, 2017 and reports from a nurse practitioner dated June 24 and 28, 2017. The Board has held that notes signed by physician assistants or nurse practitioners[7] lack probative value as medical evidence as these providers are not considered physicians under FECA.[8]

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. Therefore, these reports are insufficient to meet appellant's burden of proof.

The record does not contain any other medical evidence. Because appellant has not submitted reasoned medical evidence explaining how and why her right knee and right elbow injuries were employment related, she has not met her burden of proof.

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 did not meet her burden of proof to establish that her right knee and right elbow injuries were causally related to the accepted June 17, 2017 employment incident.

[7] *Paul Foster*, 56 ECAB 208 (2004) (where the Board found that a nurse practitioner is not a "physician" pursuant to FECA).

[8] *See David P. Sawchuk*, 57 ECAB 316, 320, n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 2, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board