United States Department of Labor
Employees' Compensation Appeals Board

E.B., Appellant	)	
	)	
and	)	**Docket No. 17-0164**
	)	**Issued: June 14, 2018**
U.S. POSTAL SERVICE, POST OFFICE, Indianapolis, IN, Employer	)	

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 H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 1, 2016 appellant filed a timely appeal from an August 8, 2016 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 that she sustained an injury causally related to the accepted October 27, 2015 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal after OWCP issued the August 8, 2016 decision. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On November 2, 2015 appellant, a 57-year-old mail carrier, filed a notice of traumatic injury (Form CA-1) alleging that she injured her back and left arm on October 27, 2015 while delivering mail. Appellant stated that she stepped on a landscape timber that was hidden under wet leaves and then slipped and fell on her back and left arm. She did not stop work.

In a November 12, 2015 development letter, OWCP advised appellant of the deficiencies of her claim and afforded her 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted a November 2, 2015 report from an unknown provider which diagnosed lumbar contusion, lumbar sprain/strain, right hip strain, cervical sprain, ankle arthritis, thumb strain, and ankle sprain.

In a November 5, 2015 report, Mark Hannaford, a physician assistant, diagnosed lumbar strain and stenosis. On November 11, 2015 Mr. Hannaford indicated that appellant was feeling better and refused physical therapy.

By decision dated December 18, 2015, OWCP accepted that the October 27, 2015 incident occurred as alleged, but denied appellant's claim finding that she failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that she had not established fact of injury.

On May 16, 2016 appellant requested reconsideration and submitted a June 24, 2016 report from an unknown provider noting that appellant was seen on November 2, 2015 as a result of a fall suffered while delivering mail. The unidentifiable provider indicated that appellant incurred injuries to her cervical and lumbar spine as a result and signed the report with an illegible signature.

By decision dated August 8, 2016, OWCP denied modification of its prior decision.

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 timely filed within the applicable time limitation period of FECA, that an injury[4] 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.[5]

[3] *Supra* note 1.

[4] 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).

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether 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.[6]

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.[7]

ANALYSIS

OWCP accepted that the employment incident of October 27, 2015 occurred at the time, place, and in the manner alleged. The issue is whether appellant sustained an injury as a result. The Board finds that appellant has not met her burden of proof to establish that she sustained an injury causally related to the October 27, 2015 employment incident.

Appellant submitted reports dated November 2, 2015 and June 24, 2016 providing diagnoses and medical opinions. However, these reports are from healthcare providers whose identities cannot be discerned from the record. Because it cannot be determined whether these records are from a physician as defined in 5 U.S.C. § 8101(2), they do not constitute competent medical evidence.[8]

Appellant also submitted a November 5, 2015 report from a physician assistant who diagnosed lumbar strain and stenosis. This also does not constitute competent medical evidence as a physician assistant is not considered a physician as defined under FECA.[9] As noted, causal relationship is a medical issue that must be addressed by medical evidence.[10]

[6] *Id.*

[7] *Id.*

[8] *R.M.*, 59 ECAB 690, 693 (2008). *See C.B.*, Docket No. 09-2027 (issued May 12, 2010) (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) and reports lacking proper identification do not constitute probative medical evidence).

[9] 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants). *See also Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

[10] *See supra* note 5.

Consequently, the Board finds that appellant has not met her burden of proof to establish her claim because she has not submitted competent medical evidence addressing how the October 27, 2015 work incident caused or contributed to a diagnosed medical condition.

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 causally related to the accepted October 27, 2015 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 14, 2018
Washington, DC

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

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

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