United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 17-2022**
	)	**Issued: March 7, 2018**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Bloomfield, NM, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 28, 2017 appellant filed a timely appeal from a September 5, 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 the claim.[2]

ISSUE

The issue is whether appellant met her burden of proof to establish an injury causally related to the accepted July 18, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The record provided the Board includes evidence received after OWCP issued its September 5, 2017 decision. The Board's jurisdiction is limited to the evidence that was in the case record at the time of OWCP's 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 July 19, 2017 appellant, then a 26-year-old range technician, filed a traumatic injury claim (Form CA-1) alleging that she injured her right arm on July 18, 2017 while pushing horses out of a horse trap while in the performance of duty. She explained that the horses tried to go through the panels and that the panels moved which caused her to fall. Appellant indicated that her right arm was bruised and that she could not move it up or outward.

In a development letter dated July 28, 2017, OWCP advised appellant that additional evidence was needed to establish her claim. This included a narrative medical report from a physician which provided a diagnosis and an opinion supported by a medical explanation as to how the reported work incident caused or aggravated a medical condition. OWCP afforded appellant 30 days to submit the requested medical evidence.

In a July 24, 2017 report, a certified physician assistant noted that appellant reported pain in the right shoulder and right lower leg since July 18, 2017 when a horse slammed her into a panel. Appellant received a diagnosis of right lower leg contusion and right upper arm/shoulder strain. Effective July 25, 2017, she was released to full duty without restrictions. On July 24, 2017 the certified physician assistant also completed a Physician's Report of Workers' Compensation Injury, a Patient Clinical Summary, and a work status note.

By decision dated September 5, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the July 18, 2017 incident occurred as alleged, but denied the claim as appellant failed to establish that a medical condition was diagnosed in connection with the July 18, 2017 incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of proof to establish 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]

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]

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

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

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

Certain healthcare 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 determined that appellant failed to establish the medical component of fact of injury. As there is no medical evidence from a qualified physician, the record does not establish that appellant sustained a right arm or right leg injury due to the employment incident, as alleged. The only evidence OWCP received was from a certified physician assistant. The Board has consistently held that physician assistants are not competent to render a medical opinion.[8] These reports are entitled to no probative weight because a physician assistant is not considered a "physician" as defined under FECA.[9]

Absent a specific injury-related diagnosis from a qualified physician, appellant has failed to establish the medical component of fact of injury. Accordingly, she has failed to meet her burden of proof to establish her traumatic injury claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish an injury causally related to the accepted July 18, 2017 employment incident.

[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 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] *See Janet L. Terry*, 53 ECAB 570 (2002). The term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); *Sean O Connell*, 56 ECAB 195 (2004) (physician assistants); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (physical therapists). *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).

[9] *See supra* note 6.

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 2018
Washington, DC

Christopher J. Godfrey, 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