

**United States Department of Labor
Employees' Compensation Appeals Board**

P.D., Appellant)	
)	
and)	Docket No. 19-0600
)	Issued: August 12, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, 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
JANICE B. ASKIN, Judge

JURISDICTION

On January 24, 2019 appellant filed a timely appeal from a January 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 his burden of proof to establish a traumatic injury causally related to the accepted November 5, 2018 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the January 7, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 15, 2018 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2018 he sustained injuries to his arm, ankle, left knee, and forehead when a dog bit him while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant stopped work on the date of injury.

Appellant submitted a continuation of pay (COP) nurse's report dated December 4, 2018, which indicated that appellant returned to work on November 29, 2018.

In a development letter dated December 7, 2018, OWCP advised appellant of the factual and medical deficiencies of his claim. It informed him of the evidence necessary to establish his claim. OWCP specifically requested that appellant submit a narrative medical report from his treating physician which provided a diagnosis and the physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. Appellant was afforded 30 days to submit the necessary evidence.

OWCP did not receive further evidence.

By decision dated January 7, 2019, OWCP denied appellant's claim finding that appellant had not submitted evidence containing a medical diagnosis in connection with the accepted November 5, 2018 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ 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 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, 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

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.⁶ 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

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *R.M.*, Docket No. 18-1281 (issued March 6, 2019); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *S.G.*, Docket No. 18-1373 (issued February 12, 2019); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

occurred.⁷ The second component is whether the employment incident caused a personal injury.⁸ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the accepted incident.⁹

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.¹¹ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹²

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury causally related to the accepted November 5, 2018 employment incident.

The Board finds that appellant has not submitted medical evidence from a physician containing a diagnosis in connection with the November 5, 2018 employment incident.¹³ The only evidence appellant submitted to the record was his completed Form CA-1 and a continuation of pay nurse's report dated December 4, 2018 which is of no probative value. OWCP advised appellant in a development letter dated December 7, 2018 that further medical evidence was necessary to establish his claim. It also afforded him an opportunity to submit a narrative medical report from his physician, which included a diagnosis and an opinion regarding causal relationship.¹⁴ However, appellant did not respond. He has the burden of proof to submit rationalized medical evidence establishing that a diagnosed medical condition was causally related

⁷ *C.L.*, Docket No. 18-1732 (issued April 2, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *C.L.*, *id.*; *R.M.*, *supra* note 4; *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *D.D.*, Docket No. 18-0648 (issued October 15, 2018); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

¹⁰ *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹¹ *E.V.*, Docket No. 18-1617 (issued February 26, 2019); *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹² *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹³ *C.L.*, *supra* note 7; *see E.B.*, Docket No. 18-0014 (issued July 12, 2018); *L.F.*, Docket No. 17-1511 (issued November 28, 2017); *J.P.*, Docket No. 14-0087 (issued March 14, 2014).

¹⁴ *See A.F.*, Docket No. 17-1374 (issued March 19, 2019).

to the accepted November 5, 2018 employment incident.¹⁵ Appellant has not submitted such evidence and thus has not met his 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 has not met his burden of proof to establish a traumatic injury causally related to the accepted November 5, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁵ See *R.C.*, Docket No. 18-1639 (issued February 26, 2019).