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

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| **A.W., Appellant** | ) | |
| **and** | ) | **Docket No. 18-0867** |
| | ) | **Issued: July 17, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

## ***JURISDICTION***

On March 18, 2018 appellant filed a timely appeal from a February 7, 2018 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 lower back injury causally related to the accepted December 12, 2017 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the February 7, 2018 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 additional evidence for the first time on appeal. *Id*.

## ***FACTUAL HISTORY***

On December 20, 2017 appellant, then a 24-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she suffered a lower back strain as a result of a December 12, 2017 motor vehicle accident (MVA) while in the performance of duty.

In a January 2, 2018 development letter, OWCP noted that, apart from the Form CA-1, it had not received additional documentation in support of appellant's claim. It explained the requirements for establishing entitlement to FECA benefits, and requested that she submit factual evidence regarding the alleged MVA and a narrative medical report from a qualified physician that included a specific diagnosis and an explanation as to how the reported employment incident either caused or aggravated the diagnosed medical condition(s). OWCP afforded appellant's 30 days to submit the requested factual information and medical evidence.

In a January 24, 2018 statement appellant explained that, on December 12, 2018, at 11:47 a.m., she was involved in an "'on-the-job'" injury caused by a MVA. She explained that she was in her employing establishment vehicle stopped in traffic when a sports utility vehicle rear-ended her. Appellant further stated that the force of the impact caused her body to jerk back and forth, which resulted in a lower back sprain.

OWCP received a Metropolitan Police Department traffic crash report, the contents of which are largely illegible.

OWCP also received a December 21, 2017 note from Dr. Lynette Brown, a Board-certified internist, who indicated that appellant was being treated for low back pain. Dr. Brown advised that appellant should avoid lifting greater than 10 pounds and avoid standing and sitting for long periods. She excused appellant from work for the period from December 15 through 31, 2017.

Dr. George Freeman Jr., a chiropractor, examined appellant on December 26, 2017 and noted a December 12, 2017 date of injury. Appellant complained of lower back pain after being involved in an MVA in which she had been rear-ended.[3] Dr. Freeman diagnosed acute lumbosacral sprain and recommended physical therapy. The report is otherwise illegible. Additionally, OWCP received physical therapy treatment records, which are illegible.

On January 4, 2018 Dr. Inder Chawla, a Board-certified physiatrist, advised that appellant should not work for four weeks.

By decision dated February 7, 2018, OWCP accepted that the December 12, 2017 employment incident occurred as alleged, but denied appellant's traumatic injury claim because the evidence of record did not contain a diagnosed medical condition in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

[3] In a January 24, 2018 addendum, Dr. Freeman clarified that appellant was operating a mail delivery truck at the time of the accident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[4] 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,[5] that an injury 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.[6] 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.[7]

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.[8] 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.[9] The second component is whether the employment incident caused a personal injury.[10]

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.[11] Aphysician's opinion on whether there is a causal relationship between the diagnosed condition and the accepted employment incident must be based on a complete factual and medical background.[12] Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[13]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish a lower back injury causally related to the accepted December 12, 2017 employment incident.

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[4] *Id.*

[5] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

[9] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[10] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[11] *T.H.*, *supra* note 8 at 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[12] *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

[13] *Id.*; *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a December 21, 2017 note, Dr. Brown indicated that appellant was being treated for "low back pain." She further advised that appellant should avoid lifting greater than 10 pounds, and avoid standing and sitting for long periods. Dr. Brown excused appellant from work for the period December 15 through 31, 2017. However, her December 21, 2017 note did not mention appellant's December 12, 2017 employment incident or include a medical diagnosis. As OWCP correctly noted, pain is a symptom, not a specific medical diagnosis.[14]

Dr. Chawla's January 4, 2018 prescription pad note excusing appellant from work for four weeks did not include either a history of injury or a specific medical diagnosis. He merely advised against working. Appellant's burden of proof includes demonstrating that the employment incident caused a personal injury.[15] Dr. Chawla's work excuse note is silent on that particular issue. As he has not offered an opinion on causal relationship, his report is of no probative value on that issue,[16] and therefore, it is insufficient to satisfy appellant's burden of proof.

Dr. Freeman, a chiropractor, examined appellant on December 26, 2017 and diagnosed acute lumbosacral sprain. He also referenced her December 12, 2017 work-related MVA. However, Dr. Freeman did not treat appellant for a subluxation of the spine as demonstrated by x-ray.[17] If the diagnosis of a subluxation as demonstrated by x-ray is not established, the chiropractor is not a physician as defined under FECA and his or her report is of no probative value to the medical issue presented.[18] The Board finds that, as the evidence of record does not include an x-ray establishing the diagnosis of subluxation, Dr. Freeman's opinion is of no probative value to establish appellant's claim.[19]

Appellant's physical therapy treatment records, which are largely illegible, similarly do not constitute competent medical evidence from a physician, and therefore, these records are insufficient to establish entitlement to FECA benefits.[20]

[14] Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.4a(6) (August 2012).

[15] *See supra* note 10.

[16] Medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship. *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[17] Subluxation means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae, which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays. 20 C.F.R. § 10.5(bb).

[18] *K.S.*, Docket No. 18-1781 (issued April 8, 2019); *Mary A. Ceglia*, 55 ECAB 626, 630 (2004).

[19] *Id.*

[20] 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. *See also Roy L. Humphrey*, 57 ECAB 238 (2005). *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); *Jane A. White*, 34 ECAB 515, 518 (1983) (physical therapist); 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

As appellant has not provided any rationalized medical evidence establishing a lower back injury causally related to the accepted December 12, 2017 employment incident, 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 has not established a lower back injury causally related to the accepted December 12, 2017 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 7, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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