

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

K.K., Appellant)	
)	
and)	Docket No. 19-0894
)	Issued: October 10, 2019
U.S. POSTAL SERVICE, DEL PASO HEIGHTS)	
STATION POST OFFICE, Sacramento, CA,)	
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 March 21, 2019 appellant filed a timely appeal from an October 18, 2018 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. 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.*

ISSUE

The issue is whether appellant has met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On September 5, 2018 appellant, then a 54-year-old sales/distribution associate, filed an occupational disease claim (Form CA-2) alleging that she developed foot, back, and neck pain due to factors of her federal employment. She indicated that she first became aware of her condition and its relationship to factors of her federal employment on July 2, 2017. On the reverse side of the claim form, the employing establishment noted that appellant stopped work on August 13, 2018 and returned to work on September 5, 2018.

In a work excuse note dated August 15, 2018, Dr. Brook Katerkamp, a Board-certified family practitioner, indicated that appellant would be on a “leave of absence” from August 13 to September 10, 2018 due to fibromyalgia flares and chronic plantar fasciitis pain.

In a September 13, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence needed to establish her claim, requested that she respond to a questionnaire to substantiate the factual elements of her claim and to submit a comprehensive narrative medical report. OWCP afforded appellant 30 days to submit the necessary evidence. No further evidence was received.

By decision dated October 18, 2018, OWCP denied appellant’s claim finding that she had not submitted evidence containing a medical diagnosis in connection with factors of her federal employment. It concluded, therefore, that the requirements had not been to establish that she sustained an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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

³ *Supra* note 1.

⁴ *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

to the employment injury.⁵ 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.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an occupational disease causally related to the accepted factors of her federal employment.

In support of her claim, appellant submitted a work-excuse note dated August 15, 2018 from Dr. Katerkamp, who indicated that appellant was to be off work from August 13 to September 10, 2018 due to fibromyalgia flares and chronic plantar fasciitis pain. While pain is a description of a symptom rather than a clear diagnosis of a medical condition,⁸ Dr. Katerkamp also diagnosed fibromyalgia flare. There is no other evidence of record which establishes the medical component of fact of injury. The Board finds that appellant did not, therefore, submit medical evidence of 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 an occupational disease causally related to the accepted factors of her federal employment.

⁵ *M.S., id.; J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.L.*, Docket No. 19-0042 (issued April 17, 2019); *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).

⁷ *C.L., id.; Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *Robert Broome*, 55 ECAB 339 (2004) (the Board has consistently held that pain is a symptom rather than a compensable medical diagnosis).

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 10, 2019
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