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

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| **R.R., Appellant** | ) | |
| **and** | ) | **Docket No. 20-0558** |
| | ) | **Issued: August 31, 2020** |
| **U.S. POSTAL SERVICE, BURNSVILLE POST OFFICE, Burnsville, MN, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

### ***JURISDICTION***

On January 14, 2020 appellant filed a timely appeal from an October 2, 2019 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 medical condition causally related to the accepted July 3, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

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

## ***FACTUAL HISTORY***

On August 17, 2019 appellant, then a 48-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 3, 2019 she sustained a right lateral strain when she twisted her right foot after stepping in a divot on the lawn while in the performance of duty. She did not stop work.

In a September 4, 2019 development letter, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to respond.

In an August 27, 2017 attending physician's report, Part B of an authorization for examination and or treatment (Form CA-16), a certified physician assistant diagnosed a capsule sprain at the fifth tarsometatarsal (TMP) joint of the right foot and noted that the diagnosed condition was caused or aggravated by the described employment activity. Appellant was released to resume regular work without restrictions.

By decision dated October 2, 2019, OWCP denied appellant's claim. It accepted that the July 3, 2019 employment incident occurred as alleged, however, it found that she had not established a diagnosed medical condition causally related to the accepted employment incident, thus the requirements had not been met for establishing an injury as defined by FECA.

## ***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 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 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 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 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. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[3] *Supra* note 1.

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place and in the manner alleged. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 specific employment factors identified by the employee.[9]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 3, 2019 employment incident.

In support of her claim, appellant submitted an August 27, 2019 attending physician's report, Form CA-16, signed solely by a physician assistant, who diagnosed a capsule sprain at the fifth TMP joint of the right foot. However, certain healthcare providers such as physician assistants are not considered "physician[s]" as defined under FECA.[10] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[11] Thus, this evidence is of no probative value and is insufficient to establish appellant's claim.

As appellant has not submitted a rationalized medical opinion sufficient to establish that she sustained a traumatic injury causally related to the accepted July 3, 2019 employment incident, the Board finds that she has not met her burden of proof to establish an employment-related traumatic injury.

On appeal appellant asserts that proper forms were not provided to her physician, who was on vacation and would provide the requested documentation later, and alleges that she is having a communication problem with OWCP. As noted above, however, OWCP properly found that

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[11] Section 8101(2) of FECA provides that 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. § 8101(2). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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); *R.K.*, Docket No. 20-0049 (issued April 10, 2020) (a physician assistant is not considered a "physician" as defined under FECA).

appellant has not met her burden of proof to establish a medical condition causally related to the accepted July 3, 2019 employment incident.[12]

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 a medical condition causally related to the accepted July 3, 2019 employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 2, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 31, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[12] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).