



## **FACTUAL HISTORY**

On December 7, 2018 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 5, 2018 he experienced “mental trauma” as a result of a dog bite that occurred when he was delivering a package while in the performance of duty. He stopped work on December 5, 2018 and returned to full-time regular duty on January 19, 2019.

In a statement dated December 5, 2018, appellant indicated that on December 5, 2018 between 6:30 p.m. and 6:45 p.m., he was delivering a package to a residence, and since it was dark outside and there was no bell on the front gate, he yelled “mailman” to get the resident’s attention. As the resident approached, he opened the gate to hand her the package when a dog ran out from the front door and jumped up on him, and then grabbed him on both pants legs and in his mid-section. Appellant explained that he attempted to defend himself and it took a while before he finally was able to get away and leave the premises. He then called his supervisor to report the incident. Appellant indicated that he was in shock and terrified.

A hospital intake form dated December 5, 2018 noted that appellant was bitten on the leg by a dog. It indicated that he had obtained medical treatment.

An emergency room summary indicated that appellant had been seen by Dr. Margaret Zielinski, Board-certified in emergency medicine, on December 5, 2018. It included a discharge diagnosis of animal bite. In a work excuse note of the same date, Dr. Zielinski indicated that appellant should not work or perform physical activity through December 6, 2018, but could return to full physical activity on December 7, 2018.

On December 6, 2018 Moonju Bae, a nurse practitioner, excused appellant from work for the period from December 6, 2018 to January 18, 2019 due to his injury. She noted that it appeared that he had experienced trauma after an attack by a dog while at work. Ms. Bae indicated that appellant would follow-up with psychiatry for his symptoms.

Eli Leiter, Ph.D., a clinical psychologist, noted on December 12, 2018, that appellant’s absence was physician-advised due to illness or injury. He indicated that appellant had an appointment on December 19, 2018 and would continue to be seen until further notice.

In a development letter dated December 19, 2018, OWCP informed appellant of the evidence needed to support his claim. It described the type of evidence needed, which should include a medical explanation regarding the cause of his emotional condition. OWCP also provided a questionnaire for his completion and afforded him 30 days to submit the requested information.

OWCP subsequently received December 5, 2018 emergency room triage records in which Dina Glori, a registered nurse, assessed appellant. Ms. Glori reported a history that appellant was attacked by a dog while delivering mail and sought emergency medical treatment. She advised that there were no visible bite marks because he was wearing multiple layers of clothing. Appellant denied pain or discomfort.

In a December 6, 2018 report, Dr. Zielinski noted a history that, while delivering mail, appellant was attacked by a dog which tried to bite him multiple times, but since he was wearing

two pairs of pants the dog's teeth did not puncture his clothing. She noted examination findings of warm and dry skin, no cyanosis, no foreign bodies detected, no distal neurovascular deficit, no evidence of infection, and no lacerations or bite marks on the skin, with tenderness of the left thigh without puncture wound. Dr. Zielinski advised that appellant was shaken up from the event, but otherwise sustained no trauma, bite wound, or injury. She diagnosed animal bite without serious injury and noted that appellant was discharged in stable condition and instructed to follow-up with his primary care physician.

By decision dated January 24, 2019, OWCP accepted that the December 5, 2018 employment incident occurred as alleged. However, it denied appellant's claim finding that the medical evidence submitted was insufficient to establish a medical diagnosis in connection with the December 5, 2018 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.<sup>4</sup>

To establish a claim for an emotional condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.<sup>5</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>6</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>5</sup> *R.B.*, Docket No. 19-0343 (issued February 14, 2020).

<sup>6</sup> 28 ECAB 125 (1976).

<sup>7</sup> *M.A.*, Docket No. 19-1017 (issued December 4, 2019); *Robert W. Johns*, 51 ECAB 137 (1999).

When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable.<sup>8</sup>

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.<sup>9</sup> This burden includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected a condition for which compensation is claimed, and a rationalized medical opinion relating the claimed condition to compensable employment factors.<sup>10</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an emotional condition causally related to the accepted December 5, 2018 employment incident.

OWCP accepted that on December 5, 2018 appellant sustained a dog bite while in the performance of duty. Appellant claimed that he sustained mental trauma due to this condition. Based on Dr. Zielinski's opinion, a diagnosed condition of animal bite without serious injury was caused by this incident. The record, however, does not include a medical diagnosis of an emotional condition in connection with the accepted employment incident.

In her December 5, 2018 emergency room report, Dr. Zielinski diagnosed animal bite without serious injury. Although she indicated that appellant appeared shaken up by the incident, she did not otherwise comment on his psychological condition and did not provide a diagnosis of any type of stress-related condition. Dr. Zielinski's opinion is therefore insufficient to satisfy appellant's burden of proof with respect to satisfying the medical component of his emotional condition claim.<sup>12</sup>

Appellant also submitted emergency room triage notes dated December 5 and 6, 2018 signed solely by Ms. Bae, a nurse practitioner, and Ms. Glori, a registered nurse, respectively.

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<sup>8</sup> *R.B.*, *supra* note 5; *Pamela D. Casey*, 57 ECAB 160 (2005); *Lillian Cutler*, *supra* note 6.

<sup>9</sup> *B.S.*, Docket No. 19-0378 (issued July 10, 2019); *Pamela R. Rice*, 38 ECAB 838 (1987).

<sup>10</sup> *P.B.*, Docket No. 17-1912 (issued December 28, 2018); *Effie O. Morris*, 44 ECAB 470 (1993).

<sup>11</sup> *D.M.*, Docket No. 20-0314 (issued June 30, 2020); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>12</sup> *See J.B.*, Docket No. 19-1767 (issued March 18, 2020).

Nurse practitioners and registered nurses are not considered physicians as defined under FECA and accordingly their reports do not constitute medical evidence.<sup>13</sup>

On December 12, 2018 Dr. Leiter merely noted appellant's absence was physician-advised due to illness or injury. He did not, however, characterize the injury in any way, provide a diagnosis in connection with an incident, or address causal relationship. Dr. Leiter's report is, therefore, of no probative value and insufficient to meet appellant's burden of proof.<sup>14</sup>

As appellant has not set forth a medical diagnosis relating to an emotional condition the Board therefore finds that appellant has failed to establish the medical component of this emotional condition claim.

On appeal appellant asserts that his claim should have been accepted because he was very traumatized by the dog attack. However, as noted, there is no evidence of record that establishes a diagnosis of an emotional condition in connection with the accepted employment incident. Consequently, appellant has failed to meet 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 failed to meet his burden of proof to establish that he sustained an emotional condition causally related to the accepted December 5, 2018 employment incident.

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<sup>13</sup> 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); 20 C.F.R. § 10.5(t). *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); *J.D.*, Docket No. 16-1752 (issued March 1, 2017) (a nurse practitioner is not considered a physician under FECA).

<sup>14</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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