

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

_____)	
L.B., Appellant)	
)	
and)	Docket No. 20-0412
)	Issued: July 16, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Crab Orchard, KY, Employer)	
_____)	

Appearances:
F. Scott Cammack, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 12, 2019 appellant, through counsel, filed a timely appeal from an August 30, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that following the August 30, 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.*

³ 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained whiplash and neck strain causally related to the accepted July 16, 2019 employment incident.

FACTUAL HISTORY

On July 17, 2019 appellant, then a 52-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 16, 2019 she was struck in a head-on collision by a truck driven by a third party who was traveling around a curve on the wrong side of the road while in the performance of duty. The employing establishment confirmed its understanding of the facts were as set forth by appellant. Appellant stopped work the same day.

In a July 16, 2019 medical report, Dr. Putrakul Kobit, Board-certified in emergency medicine, provided treatment instructions for a motor vehicle collision injury, neck contusion, and wrist sprain and prescribed pain medication. In a medical note of even date, he advised that appellant remain out of work through July 19, 2019.

On the first page of a July 17, 2019 authorization for examination and/or treatment (Form CA-16) the employing establishment authorized appellant to seek medical care related to a strain of the neck and whiplash.

In a development letter dated July 19, 2019, OWCP advised appellant of the deficiencies of her claim and of the type of factual and medical evidence necessary to establish her claim. It attached a questionnaire, requesting that she provide a detailed description of the employment incident believed to have contributed to her alleged injury, including a description of the exact medical condition she was claiming. OWCP also requested that appellant submit a narrative medical report from her physician, which contained a detailed description of findings and diagnoses, explaining how the reported incident caused or aggravated her medical condition. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding her traumatic injury claim. OWCP afforded both parties 30 days to respond.

In a July 19, 2019 attending physician's report, Part B of the Form CA-16, Dr. Robert Hendrickson, Board-certified in family medicine, noted appellant's history of whiplash, neck and back pain, and right wrist sprain. He diagnosed whiplash and a neck strain.

In duty status reports (Form CA-17) dated July 19 and August 14, 2019, Dr. Hendrickson again diagnosed whiplash and a neck strain and provided work restrictions.

In response to OWCP's questionnaire, appellant submitted an August 13, 2019 statement in which she explained that as she was delivering mail on her route she approached a curve and a truck came around the curve on her side of the road and hit her vehicle head on. She believed that the impact caused her to fly forward and the restraining seatbelt resulted in her whiplash and that her hands being on the steering wheel caused her right wrist sprain. After the collision, appellant answered questions from first responders and her postmaster and indicated that after an hour she began to feel pain in her neck, shoulders, back, and wrist, as well as a headache. She stated that she had no similar injuries or symptoms prior to the July 16, 2019 employment incident.

In an undated uniform traffic collision report, B.M., a police investigator, provided additional details concerning the July 16, 2019 employment incident.

Appellant also submitted three undated medical notes from Dr. Hendrickson's office requesting that she be excused from work for the periods July 19 to 24, 2019, July 31 to August 7, 2019, and August 28 to September 4, 2019.

By decision dated August 30, 2019, OWCP denied appellant's traumatic injury claim finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted July 16, 2019 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.¹⁰ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical

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

⁵ *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 *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 *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained whiplash and neck strain causally related to the accepted July 16, 2019 employment incident.

In Form CA-16 and Form CA-17 reports dated July 19 and August 14, 2019, respectively, Dr. Hendrickson diagnosed whiplash and a neck strain and provided work restrictions related to appellant's injuries. He did not, however, provide an opinion on the cause of her conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² Without explaining how the accepted July 16, 2019 motor vehicle accident caused or contributed to her injuries, Dr. Hendrickson's reports are insufficient to establish appellant's burden of proof.

In a July 16, 2019 medical report, Dr. Kubit provided appellant's treatment instructions for a motor vehicle collision injury, neck contusion, and wrist sprain, and prescribed pain medication. The Board has held that medical evidence lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.¹³ For this reason, Dr. Kubit's medical report is also insufficient to meet appellant's burden of proof.

The remaining medical evidence consists of three undated medical notes from Dr. Hendrickson's office requesting appellant be excused from work for various periods of time between July 19 and September 4, 2019. However, these medical notes do not address the issue of causation and therefore are insufficient to establish appellant's claim.¹⁴

As appellant has not submitted rationalized medical evidence establishing that her whiplash and neck strain were causally related to the accepted July 16, 2019 employment incident, the Board finds that she has not met her burden of proof to establish her claim.¹⁵

¹¹ *I.J.*, 59 ECAB 408 (2008).

¹² *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹³ *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹⁴ *Supra* note 12.

¹⁵ The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated July 19, 2019. A properly completed Form CA-16 form 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

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 that she sustained whiplash and neck strain causally related to the accepted July 16, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 16, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board