

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

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<b>D.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-0325</b>
	)	<b>Issued: November 5, 2021</b>
<b>U.S. POSTAL SERVICE, BIRMINGHAM POST OFFICE, Birmingham, AL, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 4, 2021 appellant filed a timely appeal from a January 4, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant sustained a medical condition causally related to the accepted November 13, 2020 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 4, 2021 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 November 16, 2020 appellant, then a 34-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 2020 she sustained five dog bites to the left leg and thigh while in the performance of duty. She stopped work on the date of injury. On the reverse side of the claim form, appellant's supervisor certified that the information provided by appellant on the form was true to the best of her knowledge and acknowledged that appellant was injured in the performance of duty.

In a narrative statement dated November 13, 2020, appellant noted that, on that date, she arrived at the driveway of a residence to deliver a package. When she went to place the packages, two large dogs attacked her, stopping only when the owner emerged from the residence.

In a development letter dated November 25, 2020, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It informed her of the type of medical evidence necessary to establish her claim and afforded her 30 days to respond.

In a note dated November 17, 2020, Dr. Stanley Barnes, a family medicine specialist, diagnosed dog bite wounds, stating that appellant sustained it while on her mail route. He recommended that she be excused from work from November 13 through December 21, 2020.

In a letter dated November 20, 2020, the employing establishment requested that Dr. Barnes provide medical rationale for his recommendation that appellant be excused from work November 13 through December 21, 2020. An unsigned and undated response diagnosed dog bite wounds to the thigh and buttock, which required multiple dressing changes and which would make it difficult to sit, stand, or walk due to extension of the wound and pain.

On November 17, 2020 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). P.B., the authorizing official, described appellant's injury as dog bites to the thigh, upper leg, and upper back. The portion of the form designated as Part B - Attending Physician's Report was signed on November 24, 2020 by Dr. Barnes. Dr. Barnes diagnosed dog bite wounds to the left thigh and buttock and provided the International Statistical Classification of Diseases (ICD) code for this diagnosis. He checked a box marked "Yes" indicating his belief that the diagnosed condition was caused by the incident of November 13, 2020. Dr. Barnes recommended that appellant remain off work until December 21, 2020, after which she could return to regular duties. He explained that she needed this time off for treatment including multiple bandage changes.

By decision dated December 28, 2020, OWCP accepted that the November 13, 2020 employment incident had occurred, as alleged. It denied the claim, however, as the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident and thus, 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 timely filed within the applicable time limitation of FECA,<sup>4</sup> 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.<sup>5</sup> 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>6</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>7</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>9</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 disability, and the specific employment incident identified by the claimant.<sup>10</sup>

## ANALYSIS

The Board finds that appellant has met her burden of proof to establish a dog bite due to the accepted November 13, 2020 employment incident. The Board also finds that the case is not

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<sup>3</sup> *Supra* note 1.

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

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

<sup>6</sup> *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).

<sup>7</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *K.L.*, Docket No. 18-1029 (issued January 9, 2019). *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>9</sup> *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>10</sup> *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

in posture as to whether she sustained disability causally related to the accepted employment injury.

OWCP accepted that the incident of November 13, 2020 occurred as alleged. On November 17, 2020 the employing establishment executed Form CA-16 in which the authorizing official, P.B., described appellant's injury as a dog bite to the thigh, upper leg, and upper back. The portion of the form designated as Part B -- Attending Physician's Report was signed on November 24, 2020 by Dr. Barnes. Dr. Barnes diagnosed dog bite wounds to the left thigh and buttock and provided the ICD code for this diagnosis. In a note dated November 17, 2020, he diagnosed dog bite wounds, stating that appellant sustained it while on her mail route.

The record establishes that appellant submitted medical evidence from Dr. Barnes containing a dog bite diagnosis in connection with her claim.<sup>11</sup> OWCP's procedures provide that, if a condition reported is a minor one, such as a burn, laceration, insect sting, or animal bite, which can be identified on visual inspection by a lay person, a case may be accepted even without a medical report.<sup>12</sup> As the evidence of record establishes diagnosed visible injuries, the Board finds that appellant has met her burden of proof to establish dog bite wounds causally related to the accepted November 13, 2020 employment incident.<sup>13</sup> Appellant has established an injury in the performance of duty.

The case will therefore be remanded for payment of medical expenses for appellant's diagnosed dog bite, to be followed by a *de novo* decision regarding any attendant disability.

### CONCLUSION

The Board finds that appellant has met her burden of proof to establish that she sustained a dog bite in the performance of duty on November 13, 2020.

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<sup>11</sup> See *S.A.*, Docket No. 20-1498 (issued March 11, 2021); *A.H.*, Docket No. 20-0730 (issued October 27, 2020); *B.C.*, Docket No. 20-0079 (issued October 16, 2020).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011); *id.* at Chapter 2.805.3(c) (January 2013). See also *A.J.*, Docket No. 20-0484 (issued September 2, 2020).

<sup>13</sup> See *R.H.*, Docket No. 20-1684 (issued August 27, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 28, 2020 decision of the Office of Workers' Compensation Programs is reversed

Issued: November 5, 2021  
Washington, DC

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

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

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