

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

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C.S., Appellant)	
)	
and)	Docket No. 21-0839
)	Issued: October 29, 2021
U.S. POSTAL SERVICE, VANDERVEER POST)	
OFFICE, Brooklyn, NY, Employer)	
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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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 11, 2021 appellant filed a timely appeal from a May 3, 2021 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted March 11, 2021 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 3, 2021 decision, appellant submitted additional evidence to OWCP. 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 March 12, 2021 appellant, then a 38-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 11, 2021 he sustained a left thigh injury when he was struck by a passing car while in the performance of duty. He stopped work on the date of injury. On the reverse side of the form, M.D., appellant's supervisor, indicated that appellant had been injured while in the performance of duty and that his knowledge of the facts agreed with appellant's account of events.

Appellant submitted March 11, 2021 municipal accident reports which indicated that at 1:28 p.m. that day while walking across a street, he had been struck by the side mirror of a vehicle turning left at an intersection. He reported pain in his left leg.

OWCP received March 11, 2021 hospital emergency department medication and discharge instructions signed by, Dr. Sabrina Sokolovsky, an emergency medicine physician, who noted that appellant had been struck by a vehicle and sustained a contusion.

In a development letter dated March 30, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a March 22, 2021 attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), and a March 31, 2021 duty status report (Form CA-17) by Dr. Yolande Bernard, an internist and physiatrist. Dr. Bernard noted that appellant had been injured at work on March 11, 2021. She noted unspecified findings of the left knee and thigh, ordered an imaging study of the left knee, and prescribed physical therapy. Dr. Bernard held appellant off from work.

Appellant also submitted March 23, 2021 x-rays of the left femur, tibia, and fibula which were negative for fracture or dislocation. A March 26, 2021 magnetic resonance imaging (MRI) scan of the left knee demonstrated a synovial effusion, patellar subluxation, patellofemoral chondromalacia, patellofemoral joint narrowing, prominent patellar tendinosis/tendinopathy, a distal posterior cruciate ligament sprain, anterior cruciate ligament sprain, and tibial intercondylar surface irregularity.

On May 3, 2021 OWCP received multiple hospital medical emergency department records, which included a full complement of treatment provided by Dr. Sokolovsky and the medical staff during appellant's hospital admission on March 11, 2021.

By decision dated May 3, 2021, OWCP accepted that the March 11, 2021 employment incident occurred as alleged. However, it denied the claim, finding that appellant had not submitted rationalized medical opinion evidence supporting a causal relationship between the accepted employment incident and the claimed left lower extremity injury. OWCP based its decision on the review of Dr. Bernard's Form CA-20, noting that it was the "sole record from a physician discussing causal relationship." It thus found that the requirements had not been met to

establish an injury and/or a medical condition causally related to the accepted employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

The medical evidence required to establish causal relationship 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 incidents identified by the employee.⁹

ANALYSIS

The Board finds that this case is not in posture for decision.

³ *Supra* note 1.

⁴ *V.L.*, Docket No. 20-0884 (issued February 12, 2021); *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 *C.H.*, Docket No. 20-1212 (issued February 12, 2021); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *V.L.*, *supra* note 4; *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).

⁷ *R.O.*, Docket No. 20-1243 (issued May 28, 2021); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.H.*, *supra* note 5; *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 *R.O.*, *supra* note 7; *V.L.*, *supra* note 4; *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).

OWCP based its denial of appellant's claim on a Form CA-20 submitted by Dr. Bernard, finding that it was the "sole record from a physician" addressing the issue of causal relationship. It, however, failed to review and address all of the evidence documenting appellant's emergency department treatment by Dr. Sokolovsky and the medical staff that was received on May 3, 2021, the same date it issued its final decision. In the case of *William A. Couch*,¹⁰ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. OWCP's procedures provide that it is crucial that all relevant evidence received prior to the issuance of final decision is addressed, as the Board's decisions are final with regard to the subject matter appealed.¹¹ This principle applies with regard to evidence received by OWCP the same day a final decision is issued.¹² As OWCP did not address all of the evidence that appellant submitted the day it issued its May 3, 2021 decision, the Board finds that this case is not in posture for decision.

For this reason, the case will be remanded to OWCP to enable it to properly consider all of the evidence submitted at the time of the issuance of the May 3, 2021 decision. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹⁰ 41 ECAB 548 (1990); *see also P.B.*, Docket No. 21-0157 (issued September 2, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012); *William A. Couch, id.* *See also C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004).

¹² *See T.B.*, Docket No. 21-0448 (issued September 27, 2021); *S.S.*, Docket No. 19-1737 (issued April 7, 2020); *J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision must be reviewed).

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.¹³

Issued: October 29, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ 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); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003). However, as the obverse of the Form CA-16 is not of record, it has not been established that the employing establishment duly signed or authorized the form. There is, therefore, insufficient evidence that a contractual obligation was created.