

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

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**K.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Birmingham, AL, Employer**

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**Docket No. 22-0489  
Issued: August 2, 2022**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 17, 2022 appellant filed a timely appeal from a January 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 18, 2021 employment incident.

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<sup>1</sup> The Board notes that, following the January 19, 2022 decision, appellant submitted 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On December 13, 2021 appellant, then a 31-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 18, 2021 she was punched in the left eye, resulting in a bruise, by a women who accused her of stealing the contents of her package while in the performance of duty. She attested that her assailant had a man with her who knew personal information about her and threatened her. On the reverse side of the claim form appellant's supervisor indicated that she was injured in the performance of duty. The employing establishment, however, controverted appellant's claim. Appellant stopped work on November 18, 2021.

In a development letter dated December 17, 2021, OWCP advised appellant of the type of factual and medical evidence needed and provided appellant with a questionnaire. It afforded appellant 30 days to submit the necessary evidence. In a letter of even date to the employing establishment, OWCP noted that it had controverted appellant's claim as she had not participated in an investigation of the incident and had not sought medical treatment as of December 10, 2021.

In imaging reports dated December 14, 2021, Dr. Richard Coleman, a Board-certified diagnostic radiologist, related that appellant was assaulted on November 8, 2021 and suffered a headache, dizziness, and pain in her face and left eye. He reported an impression of mild lateral ventricular enlargement without evidence of periventricular edema or other evidence of mass effect or increased intracranial pressure. Dr. Coleman related that this was likely a congenital variant; however, he recommended that appellant undergo a magnetic resonance imaging (MRI) scan. He also reviewed an imaging study of appellant's facial bones, which was negative for facial fracture.

Appellant submitted a statement dated November 18, 2021 attesting that she was delivering mail when she was approached by two individuals who accused her of stealing the contents of a package that she had delivered a few days ago. She explained that she did not steal anything, but retaped the package because it was open and contents were spilling out. Appellant alleged that the male individual knew personal information about her, but that she had never seen the two individuals before and did not know how they had information about her. She related that the female reached into the vehicle and punched her in the left eye. Appellant also submitted undated photographic images of appellant's left eye.

By decision dated January 19, 2022, OWCP accepted that the November 18, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It 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 that the individual is an employee of the United

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

States within the meaning FECA, that the claim was timely filed within the applicable time limitation period 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>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</sup>

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted November 18, 2021 employment incident.

Appellant was seen and evaluated by Dr. Coleman on December 14, 2021, who noted that appellant was assaulted on November 18, 2021. Dr. Coleman related that appellant experienced

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *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).

<sup>9</sup> *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).

headache, dizziness and left facial and eye pain. The Board has long held that headache,<sup>10</sup> dizziness,<sup>11</sup> and pain<sup>12</sup> are symptoms, but not firm diagnoses. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion regarding causal relationship is of no probative value.<sup>13</sup> Dr. Coleman also noted an impression of mild lateral ventricular enlargement without evidence of periventricular edema or other evidence of mass effect or increased intracranial pressure. He related that this was likely a congenital variant. As Dr. Coleman did not provide a firm diagnosis causally related to the accepted employment incident his reports are insufficient to establish appellant's claim.<sup>14</sup>

Appellant also submitted photographs, which purportedly showed her bruised eye. While a photograph demonstrating a visible bruise, memorialized contemporaneously to the date of injury, may be sufficient to establish a minor injury, the photographs submitted did not contain information evidencing that the photographs were taken of appellant at a certain date.<sup>15</sup> The Board also notes in this regard that, while appellant alleged on her CA-1 form that she had experienced a black eye for a week, the supervisor's statements on the reverse side of the claim form did not indicate that a black eye had been visualized. The Board, therefore, finds that appellant has not established that she sustained a visualized minor injury on November 18, 2021.

The Board further finds that appellant has not established additional conditions causally related to the accepted November 18, 2021 employment injury. While appellant also alleged that she was traumatized by the November 18, 2021 incident, she has not submitted any evidence of an emotional condition resulting from the accepted employment incident.

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 November 18, 2021 employment incident.

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<sup>10</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *see Deborah L. Beatty*, 54 ECAB 340 (2003). *See also Larry M. Leudtke*, Docket 03-1564 (issued September 2, 2003) (where the Board found that headache described a symptom and did not constitute a firm diagnosis of a medical condition).

<sup>11</sup> *P.S.*, Docket No. 10-1560 (issued June 23, 2011).

<sup>12</sup> *T.G.*, Docket No. 19-0904 (issued November 25, 2019).

<sup>13</sup> *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>14</sup> *Id.*

<sup>15</sup> *T.W.*, Docket No. 20-0807 (issued December 3, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 2, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board