United States Department of Labor
Employees' Compensation Appeals Board

K.A., Appellant	)	
and	)	**Docket No. 22-1168**
	)	**Issued: December 8, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On August 3, 2022 appellant filed a timely appeal from a March 10, 2022 merit decision and a July 27, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a left-hand condition causally related to the accepted January 6, 2022 employment incident; and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 18, 2022 appellant, then a 33-year-old postal support employee customer service clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2022 she crushed and sprained her finger when an automated postal center machine rolled onto her hand when she was attempting to free a jammed package while in the performance of duty. She stopped work on January 7, 2022 and returned on January 10, 2022.

Along with her claim, appellant submitted January 6, 2022 visit notes from Dr. William Appiah, Board-certified in emergency medicine, which provided treatment plans for a crush injury and a sprained finger, and follow-up instructions.

In a January 21, 2022 progress note, Dr. Randolph Lopez, a hand surgeon, related that appellant reported that on January 6, 2022 her finger was crushed between the wall and a machine. He diagnosed a closed nondisplaced fracture of the left ring finger middle phalanx. A duty status report (Form CA-17) of even date signed by an unidentifiable health care provider noted a diagnosis of left ring finger fracture. OWCP also received an illegible work excuse note of even date from an unidentifiable healthcare provider.

In a January 24, 2022 claim for compensation (Form CA-7), appellant claimed disability from work for the period January 9 through March 4, 2022.

In a January 31, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed to establish her claim and afforded her 30 days to submit the necessary evidence.

In response to the development questionnaire, appellant submitted a January 21, 2022 progress note from Dr. Lopez containing an x-ray review and noting an impression of a nondisplaced fracture of the left ring finger middle phalanx. OWCP also received a referral of even date from an unidentifiable healthcare provider for occupational therapy evaluation and additional treatment.

A February 9, 2022 occupational therapy initial evaluation from Dominic Joseph, a physical therapist, noted diagnoses of pain in the left hand, joints of the left hand, and a nondisplaced fracture of the middle phalanx of the left ring finger with routine healing. Mr. Joseph instructed appellant to wear a splint at all times.

In a February 23, 2022 progress note, Dr. Lopez noted that appellant's fracture did not appear to be fully healed and opined that the mechanism of injury she described was a classic crush injury that typically causes significant pain and will require an eight-week recovery. He reiterated his prior diagnosis and further diagnosed a crushing injury of the left hand.

Appellant also submitted a Form CA-17 dated February 23, 2022 signed by an unidentifiable healthcare provider and a February 25, 2022 Form CA-7 claiming disability from work for the period January 22 through March 23, 2022.

By decision dated March 10, 2022, OWCP accepted that the January 6, 2022 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that

the evidence of record was insufficient to establish a causal relationship between her diagnosed left-hand condition and the accepted January 6, 2022 employment incident.

On March 30, 2022 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 7, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for July 14, 2022 at 2:00 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was received.

A July 6, 2022 report of work status (Form CA-3) noted that appellant stopped work on January 20, 2022 and returned to regular duty on March 24, 2022.

By decision dated July 27, 2022, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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,[3] 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.[4] 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.[5]

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. There are two components involved in establishing fact of injury. The first component is whether he or she actually experienced the employment incident at the time and place, and in the manner alleged.

[2] *Id*.

[3] *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).

[4] *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).

[5] *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).

The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[6]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[7] 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 the specific employment incident identified by the claimant.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met her burden of proof to establish a left-hand condition causally related to the accepted January 6, 2022 employment incident.

Appellant submitted a January 21, 2022 progress note in which Dr. Lopez diagnosed a closed nondisplaced fracture of the left ring finger middle phalanx, and a February 23, 2022 progress note in which he diagnosed a crushing injury of the left hand and opined that the mechanism of injury was a classic crush injury. The Board has held that a medical opinion that does not offer a medically-sound and rationalized explanation by the physician of how the specific employment incident physiologically caused or aggravated the diagnosed conditions is of limited probative value.[9] Thus, Dr. Lopez' January 21, 2022 note is of limited probative value.

In Dr. Appiah's January 6, 2022 visit notes which provided treatment plans for a crush injury and a sprained finger and follow-up instructions. However, he did not provide an opinion on causal relationship. The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[10] As such, Dr. Appiah's notes are also insufficient to establish appellant's claim.

Additionally, OWCP received a February 9, 2022 occupational therapy initial evaluation from Mr. Joseph, a physical therapist. However, certain healthcare providers such as physical therapists are not considered "physician[s]" as defined under FECA.[11] Consequently, their

[6] *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).

[7] *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).

[8] *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

[9] *J.B.*, Docket No. 21-0011 (issued April 20, 2021); *A.M.*, Docket No. 19-1394 (issued February 23, 2021).

[10] *See D.Y.*, Docket No. 20-0112 (issued June 25, 2020); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

medical findings or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

The remaining evidence of record consists of an illegible January 21, 2022 work excuse note from an unidentifiable healthcare provider, a referral note of even date with an illegible signature, and Form CA-17s dated January 21 and February 23, 2022 from unidentifiable healthcare providers, noting a diagnosis of left ring finger fracture. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[13] Therefore, these reports are insufficient to establish appellant's claim.

As appellant has not submitted rationalized medical opinion evidence establishing a left-hand condition causally related to the accepted January 6, 2022 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

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.

LEGAL PRECEDENT -- ISSUE 2

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.[14] Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.[15] OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.[16]

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[12] Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as 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* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship,* Chapter 2.805.3a(1) (January 2013); *H.K.*, Docket No. 19-0429 (issued September 18, 2019) (physician assistants, physical therapists, and acupuncturists are not considered physicians as defined by FECA); *K.W.*, 59 ECAB 271, 279 (2007); *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); *see also A.M.*, Docket No. 20-1575 (issued May 24, 2021) (physical therapists are not physicians as defined by FECA).

[13] *L.B.*, Docket No. 21-0353 (issued May 23, 2022); *T.D.*, Docket No. 20-0835 (issued February 2, 2021); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[14] 20 C.F.R. § 10.616(a).

[15] *Id.* at § 10.617(b).

[16] *C.H.*, Docket No. 21-0024 (issued November 29, 2021); *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.[17]

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing.

Following OWCP's March 10, 2022 decision denying appellant's traumatic injury claim, she filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a June 7, 2022 notice, a hearing representative notified her that it had scheduled a telephonic hearing for July 14, 2022 at 2:00 p.m. EST. The hearing notice was properly mailed to appellant's last known address of record and provided instructions on how to participate.[18] The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This presumption is commonly referred to as the mailbox rule.[19] Appellant did not request a postponement, and failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear. The Board, therefore, finds that she abandoned her request for an oral hearing.[20]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left-hand condition causally related to the accepted January 6, 2022 employment incident. The Board further finds that OWCP properly determined that she abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

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[17] 20 C.F.R. § 10.622(f); *supra* note 12 at Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, *supra* note 10.

[18] *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

[19] *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).

[20] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the March 10 and July 27, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2022
Washington, DC

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

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

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