

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

_____)
K.M., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
St. Louis, MO, Employer)
_____)

Docket No. 22-0353

Issued: July 14, 2022

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 9, 2022 appellant filed a timely appeal from a December 10, 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 her burden of proof to establish a medical condition causally related to the accepted October 3, 2021 employment incident.

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¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 10, 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 October 27, 2021 appellant, then a 21-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2021 she sustained herniated discs at C5 and C6, an unknown left leg injury, and bruising and swelling in her chest and stomach when her seatbelt failed and her chest and stomach slammed into the steering wheel of her vehicle as a result of a motor vehicle accident while in the performance of duty. She noted that her vehicle hydroplaned off a road into a stop sign and into a rock bluff. Appellant indicated that she stopped work on the date of injury. In an accompanying October 7, 2021 narrative statement, she reiterated her account of the alleged employment incident. Appellant also noted that she was evaluated by emergency medical service personnel at the accident site and refused to be transported by ambulance to a hospital for further evaluation. After the postmaster arrived to take pictures of the accident scene, she went to the hospital for treatment.

OWCP, in a November 1, 2021 development letter, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received hospital records from an October 3, 2021 emergency department visit, including diagnostic studies and an October 3, 2021 after-visit summary and an October 4, 2021 progress note of Dr. Charles R. Caffrey, Board-certified in emergency medicine. Dr. Caffrey noted that appellant presented with on-the-job injury that occurred when the mail truck she was driving hydroplaned and ran into a brick wall on October 3, 2021. He further noted that she mainly complained of pain in her abdomen, chest wall, left knee, and right upper extremity. Dr. Caffrey reviewed diagnostic test results and diagnosed acute left knee pain; motor vehicle collision, initial encounter; and abdominal pain, unspecified abdominal location. He also noted that appellant had sustained a possible cervical herniated disc, but that she denied any pain on palpation, or any radicular component of pain.

OWCP, by decision dated December 10, 2021, accepted that the October 3, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that she had not submitted medical evidence sufficient to establish a diagnosed medical condition causally related to the 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 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

³ *Id.*

⁴ *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).

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. There are two components involved in establishing fact of injury. First, 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. Second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 factors identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted October 3, 2021 employment incident.

In support of her claim, appellant submitted an October 3, 2021 after-visit summary and an October 4, 2021 progress note from Dr. Caffrey, which related that appellant was seen in the hospital emergency department on October 3, 2021 for pain in her abdomen, chest wall, left knee, and right upper extremity following the accepted employment incident. Dr. Caffrey reviewed diagnostic test results and diagnosed acute left knee pain; motor vehicle collision, initial encounter; and abdominal pain, unspecified abdominal location. The Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.¹⁰ Dr. Caffrey also indicated that appellant

⁵ *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).

⁶ *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 *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).

⁸ *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 *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).

¹⁰ *See G.J.*, Docket No. 21-0528 (issued February 1, 2022); *K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

had sustained a possible herniated cervical disc; however, she did not have pain on palpation or a radicular component of pain. This opinion is speculative in nature as he only identified a possible diagnosis. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.¹¹ Further, Dr. Caffrey did not provide an opinion on causal relationship. The Board has held that a medical report is of no probative value if it does not offer an opinion as to whether the accepted employment incident caused or aggravated a diagnosed condition.¹²

As there is no medical evidence of record establishing a diagnosed medical condition causally related to the accepted employment incident, the Board finds that appellant has not met her burden of proof.

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 accepted October 3, 2021 employment incident.

¹¹ *N.H.*, Docket No. 21-1133 (issued February 25, 2022); *see D.B.*, Docket No. 20-0775 (issued July 28, 2021).

¹² *G.J.*, *supra* note 10; *L.E.*, Docket No. 19-0470 (issued August 12, 2019); *M.J.*, Docket No. 18-1114 (issued February 5, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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