

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

_____)	
S.R., Appellant)	
)	
and)	Docket No. 22-0421
)	Issued: July 15, 2022
U.S. POSTAL SERVICE, BEAVER DAM POST OFFICE, Beaver Dam, WI, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 20, 2022 appellant filed a timely appeal from an October 8, 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 over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted August 24, 2021 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 8, 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 August 27, 2021 appellant, then a 29-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2021 she was involved in a motor vehicle accident and suffered a contusion to her left elbow when her elbow was impacted by the long life vehicle and mail tray while in the performance of duty. On the reverse side of the claim form, her supervisor acknowledged that she was injured in the performance of duty.

OWCP received a duty status report dated August 24, 2021, signed by an emergency room physician assistant.³ The report noted bruising and abrasion of appellant's left elbow and diagnosed left elbow contusion.

In a development letter dated September 8, 2021, OWCP advised appellant that additional factual and medical evidence was necessary to establish her claim. It noted the type of factual and medical evidence needed and provided appellant with a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received chiropractic reports dated August 30, September 1, 3, 8, and 13, 2021. In the August 30, 2021 note, Dr. Ruth Schroeder, a chiropractor, related that appellant was involved in a motor vehicle accident at work on August 24, 2021 and that she was experiencing neck, mid back, and left elbow pain. She advised that, to assess appellant's cervical structure, cervical x-rays were taken. Dr. Schroeder related that, based on objective findings, appellant's C1 vertebra was found to be rotated posteriorly on the left, C5 was rotated posteriorly on the right, C6 had a right posterior rotation subluxation, and T4 was rotated posteriorly on the left. Other findings were noted based on findings elicited on palpation. Dr. Schroeder further noted that appellant's treatment plan included spinal manipulation.

Appellant submitted reports dated September 8 and 13, 2021 from Lucas Benish, a physical therapist. Mr. Benish related that on August 24, 2021 appellant was involved in a motor vehicle accident and was hit by a metal mail tray on her left thigh and elbow. Appellant experienced soreness and likely a contusion.

By decision dated October 8, 2021, OWCP accepted that the August 24, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that she had not submitted medical evidence that a medical condition was diagnosed 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 FECA⁴ 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 FECA, that the claim was timely filed within the applicable time

³ The signature is illegible.

⁴ *Id.*

limitation period of FECA,⁵ 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.⁶ 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.⁷

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.⁸

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁹ 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.¹⁰

Pursuant to OWCP's procedures, no development of a claim is necessary where the condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burn, laceration, insect sting, or animal bite).¹¹ No medical report is required to establish a minor condition such as a contusion.¹²

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

⁹ *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).

¹⁰ *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).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.800.6(a) (June 2011).

¹² *Id.*; see *B.C.*, Docket No. 20-0498 (issued August 27, 2020) (the Board accepted lumbar contusion as causally related to the accepted employment incident); *S.H.*, Docket No. 20-0113 (issued June 24, 2020) (the Board accepted a right ankle contusion as causally related to the accepted employment incident); *M.A.*, Docket No. 13-1630 (issued June 18, 2014).

ANALYSIS

The Board finds that appellant has met her burden of proof to establish diagnosed conditions of left elbow contusion and cervical subluxation.

The Board notes that, pursuant to Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6(a) (June 2011), 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 without a medical report and no development of the case need be undertaken, if the injury was witnessed or reported promptly, and no dispute exists as to the occurrence of an injury; and no time was lost from work due to disability.¹³ This section of OWCP's procedures further states that, in cases of serious injury, (motor vehicle accidents, stabbings, shootings, etc.) if the employing establishment does not dispute the facts of the case, and there are no questionable circumstances, the case may be accepted for a minor condition, such as laceration, without a medical report, while simultaneously developing the case for other more serious conditions. This is true even if there is lost time due to such a serious injury.¹⁴

On August 24, 2021 appellant was involved in a motor vehicle accident. She was seen and evaluated by a physician assistant at an emergency room on that day. The physician assistant noted bruising and abrasion of appellant's left elbow and diagnosed left elbow contusion. The diagnosis of bruising was consistent with appellant's physical examination and the mechanism of injury. The Board finds that this information, taken together, is sufficient to meet the standards set forth in OWCP's procedures for accepting a contusion to the left elbow without a medical report from a qualified physician. Based on the description of the condition, it was a minor condition identifiable on visual inspection by a lay person.¹⁵

The Board further finds that appellant has established a cervical subluxation diagnosis. The Board notes that section 8101(2) of FECA¹⁶ provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.¹⁷ OWCP's implementing federal regulation at 20 C.F.R. § 10.5(bb) defines subluxation as an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrated on x-ray. In her August 30, 2021 report, Chiropractor Ruth Sherman related that she had taken x-rays of appellant's cervical spine. She noted objective findings regarding the cervical spine, which included subluxation at C6, and cervical vertebrae rotation at C1 and C5. Dr. Sherman distinguished other cervical and thoracic findings, which were based on palpation. The Board

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See id.*

¹⁶ 5 U.S.C. § 8101(2).

¹⁷ *Id.*; 20 C.F.R. § 10.311.

finds that as Dr. Sherman did diagnose cervical subluxation based on x-ray findings, she is a physician under FECA.

Accordingly, the October 8, 2021 decision is reversed to find that appellant has established diagnosed conditions. Upon return of the case record, OWCP shall make payment and/or reimbursement of medical expenses with regard to the accepted contusion/bruising to the left elbow.¹⁸ It shall thereafter also determine whether appellant has established that the diagnosed cervical subluxations were causally related to the accepted employment injury. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a left elbow contusion causally related to the August 24, 2021 employment incident. The Board further finds that the case is not in posture for decision as to whether appellant's diagnosed cervical subluxations were causally related to the accepted August 24, 2021 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the October 18, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 15, 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

¹⁸ *B.C.*, *supra* note 12.