United States Department of Labor
Employees' Compensation Appeals Board

J.R., Appellant	)	
and	)	**Docket No. 22-0622**
	)	**Issued: July 25, 2022**
U.S. POSTAL SERVICE, POST OFFICE	)	
Phoenix, AZ, 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 March 24, 2022 appellant filed a timely appeal from a December 20, 2021 merit 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.[2]

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted November 3, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 20, 2021 decision, OWCP received additional evidence. 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 November 5, 2021 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2021he experienced pain in the lower right side and middle of his back for which he indicated that he had no explanation for. On the reverse side of the claim form L.L., an employing establishment supervisor, controverted the claim, asserting that there was no mechanism of injury, that pain is not a diagnosis, and that appellant had noted he was unaware as to how he was injured. Appellant did not stop work.

On November 5, 2021 appellant was treated by Dr. Yarden Tahan, Board-certified in family medicine, for a new complaint of back pain. Dr. Tahan noted that appellant described pain in his lumbar and thoracic spine, aggravated by bending, lying, sitting, standing, and twisting. Appellant reported that he exited his vehicle Wednesday morning and started walking with his satchel, did not do anything out of the ordinary, and shortly thereafter felt a pull in his back. As he continued to deliver mail, the pain worsened and when he reached the end of the block he contacted the office and advised that he could not continue his route. Dr. Tahan noted that appellant eventually presented to the emergency room. She diagnosed chronic bilateral low back pain without sciatica, prescribed medication for muscle spasms, and referred appellant to a pain clinic.

In a November 9, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received evidence. In a letter dated November 5, 2021, Dr. Tahan noted that she saw appellant in her office due to back spasm and recommended that he not return to work until November 15, 2021. She prescribed medication and provided instruction on home exercises. Dr. Tahan recommended that appellant use a pushcart with baskets to avoid carrying a load on his shoulders or back to prevent further injuries upon return to work. On November 12, 2021 she reported that appellant complained of continued back pain and that he would be evaluated by a specialist on November 16, 2021. Dr. Tahan requested that his leave be extended until that evaluation was complete.

On November 30, 2021 OWCP received a report from Marla Polo-Ziza, a physician assistant. Ms. Polo-Ziza reported that she treated appellant on November 3, 2021 for complaints of pain in his lower and mid-back while at work lifting and delivering mail. Ms. Polo-Ziza diagnosed acute back pain or unspecified dorsalgia. The plan of care included oral over-the-counter medication, a hot/cold pack, and a physical therapy referral.

In a December 17, 2021 response to OWCP's development questionnaire, appellant asserted that he had parked his postal vehicle and grabbed his satchel and packed it with approximately 25 pounds of mail. As he approached his first stop, he reached for the mail and felt a sharp pain, which worsened as he continued his route. Appellant noted that, when he reached the end of the block, he was unable to continue his route and contacted his supervisor, filled out paperwork, and was sent to a medical center. After seeing a physician at the medical center, he made an appointment with his primary care doctor and missed approximately five days of work. Appellant also saw a pain specialist who provided work restrictions precluding carrying a satchel

to prevent back strain. He also noted that carrying weight on his shoulder caused strain on his shoulder, as he walks nine miles a day, five days a week. Appellant asserted that his claimed condition could fall under both a traumatic injury and an occupational disease.

By decision dated December 20, 2021, OWCP accepted that the November 3, 2021 employment incident occurred as alleged. However, it denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, OWCP found that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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. There are two components involved in establishing fact of injury. The first component is that 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. The 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 a 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

[3] *Supra* note 1.

[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).

[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).

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 incident.[9]

ANALYSIS

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

In support of his claim, appellant submitted a November 3, 2021 note from Ms. Polo-Ziza, a physician assistant, diagnosing acute back pain or unspecified dorsalgia. The Board has long held that certain healthcare providers such as physician assistants are not considered qualified "physician[s]" as defined under FECA and, thus, their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.[10] Accordingly, the November 3, 2021 report is insufficient to satisfy appellant's burden of proof.[11]

Appellant also submitted medical evidence from Dr. Tahan dated November 5 and 12, 2021, wherein she diagnosed chronic bilateral low back pain. The Board has consistently held that pain is a symptom and not a compensable medical diagnosis.[12] As such, this evidence is also insufficient to establish appellant's claim.

As appellant has not submitted medical evidence establishing a diagnosed medical condition causally related to the accepted November 3, 2021 employment incident, the Board finds that he has not met his 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 his burden of proof to establish a diagnosed medical condition causally related to the accepted November 3, 2021 employment incident.

[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] Section 8102(2) of FECA provides as follows: (2) physician includes 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) (September 2020); *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 E.W.*, Docket No. 20-0338 (issued October 9, 2020).

[11] *R. H.*, Docket No. 21-1382 (issued March 7, 2022); *S.E.*, Docket No. 21-0666 (issued December 28, 2021).

[12] *See S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 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