United States Department of Labor
Employees' Compensation Appeals Board

J.O., Appellant	)	
and	)	**Docket No. 22-0240**
	)	**Issued: June 8, 2022**
U.S. POSTAL SERVICE, TW HOUSE 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On December 3, 2021 appellant filed a timely appeal from a December 2, 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 left knee condition causally related to the accepted October 16, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the December 2, 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 25, 2021 appellant, then a 26-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 16, 2021 injured his left knee when his foot hit the ground and heard a pop as he stepped out of his motor work vehicle while in the performance of duty. He stopped work on October 23, 2021.

In an October 26, 2021 development letter, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It informed him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received an October 18, 2021 excuse slip from an urgent care provider with an illegible signature which indicted that appellant would be unable to return to work until October 21, 2021. On an October 29, 2021 Duty Status Report (Form CA-17) a provider with an illegible signature noted a diagnosis of left knee lateral collateral pain and indicated that appellant was disabled from work.

In an October 29, 2021 report, Dr. Dan Ung, a chiropractor, related that appellant was seen for left knee pain due to an employment injury which occurred when appellant placed his left foot on the ground while stepping out of his truck. He related that, on physical examination, appellant had restricted left knee flexion, positive anterior draw test, and positive valgus stress test. Dr. Ung also noted that appellant had diminished left knee flexor and extensor muscles motor strength, which indicated L1-3 nerve root involvement. He diagnosed left knee lateral collateral ligament internal derangement and anterior cruciate ligament internal derangement and recommended physical therapy.

In a report dated October 30, 2021, Timothy Holcomb, a nurse practitioner noted that appellant was evaluated for an October 16, 2021 injury when appellant heard his left knee pop while stepping down out of his motor vehicle onto his left foot. On physical examination of the left knee he found palpable tenderness over the lateral aspect, painful extension, and positive stress test. Appellant's diagnosis was noted as probable left knee sprain to the collateral ligament.

On an October 30, 2021 Form CA-17, Mr. Holcomb noted that on October 16, 2021 appellant's left knee popped when appellant stepped out of his motor vehicle. He indicated that appellant had a left knee sprain and that he was temporarily totally disabled.

In a November 4, 2021 attending physician's report, Part B of an Authorization for Examination and/or Medical Treatment (Form CA-16), Dr. Lubor Jarolimek, an orthopedic surgeon, noted that appellant experienced left knee pain back while stepping out of his vehicle. He diagnosed left knee strain and found appellant totally disabled for the period November 4 to December 5, 2021. Dr. Jarolimek checked a box marked "Yes" to the question of whether the diagnosed condition was caused or aggravated by the employment activity described.

In a Form CA-17 of even date, Dr. Jarolimek noted that on October 16, 2021 appellant popped his knee when he stepped out of his truck and popped his knee. He noted clinical findings

of swelling and locking, diagnosed left knee sprain, and responded, "Yes" that the diagnosis was due to injury.

By decision dated December 2, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence explaining how his diagnosed left knee condition was causally related to the accepted October 16, 2021 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA,[3] that the claim was timely filed within the applicable time limitation period of FECA, 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 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.[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

[3] *D.A.*, Docket No. 21-0478 (issued October 14, 2021); *K.R.*, Docket No. 20-0995 (issued January 29, 2021); *A.W.*, Docket No. 19-0327 (issued July 19, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *D.A.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *J.B.*, Docket No. 20-1566 (issued August 31, 2021); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *D.A.*, *supra* note 3; *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] *D.A.*, *id.*; *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).

nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[8]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a left knee condition causally related to the accepted October 16, 2021 employment incident.

In support of his claim, appellant submitted an attending physician's report, Part B of a Form CA-16, dated November 4, 2021, wherein Dr. Jarolimek diagnosed left knee strain and checked a box marked "Yes" indicating that the condition was caused or aggravated by the employment incident. Similarly, Dr. Jarolimek, on a Form CA-17 dated November 4, 2021, noted clinical findings of left-sided injury and responded "Yes" that the diagnosis was due to injury. The Board has held, however, that reports that address causal relationship only by checkmark, without medical rationale explaining how the employment incident caused or aggravated the diagnosed condition, are of diminished probative value.[9] These reports are, therefore, insufficient to establish causal relationship.

OWCP received an October 29, 2021 report from Dr. Ung, a chiropractor, who diagnosed left knee lateral collateral ligament internal derangement and anterior cruciate ligament internal derangement. A chiropractor, however, is only considered a physician for purposes of FECA if he or she diagnoses subluxation based upon x-ray evidence.[10] As Dr. Ung has not diagnosed subluxation based upon x-ray evidence, he is not considered a physician as defined under FECA and his medical report does not constitute competent medical evidence.[11]

The record contains an October 18, 2021 excuse slip from an urgent care provider whose signature was illegible, finding that appellant was disabled from work until October 21, 2021. Similarly, in partially legible Form CA-17 dated October 29, 2021, the healthcare provider diagnosed left knee lateral collateral pain and indicated that appellant was disabled from work. The Board has held that a report that is unsigned or bears an illegible signature lacks proper

[8] *D.A., id.*; *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).

[9] *See R.C.*, Docket No. 20-1525 (issued June 8, 2021); *K.R.*, Docket No. 19-0375 (issued July 3, 2019); *Deborah L. Beatty*, 54 ECAB 340 (2003).

[10] Section 8101(2) of FECA provides that the term physician includes chiropractors only if the treatment consists of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. 5 U.S.C. § 8101(2). *See also S.L.*, Docket No. 21-0760 (issued January 6, 2022); *T.T.*, Docket No. 18-0838 (issued September 19, 2019); *Thomas W. Stevens*, 50 ECAB 288 (1999); *George E. Williams*, 44 ECAB 530 (1993).

[11] *S.L., id.*; *J.D.*, Docket No. 19-1953 (issued January 11, 2021); *C.S.*, Docket No. 19-1279 (issued December 30, 2019).

identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[12] These reports are therefore insufficient to establish appellant's claim.

Appellant submitted a medical report and Form CA-17 dated October 30, 2021 from Mr. Holcomb, a nurse practitioner. However, certain healthcare providers such as nurse practitioners,[13] are not considered "physician[s]" as defined under FECA.[14] Consequently, medical findings and/or opinions by a nurse practitioner will not suffice for purposes of establishing entitlement to FECA benefits.[15] These reports are therefore also insufficient to establish the claim.

As the medical evidence of record is insufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted October 16, 2021 employment incident, the Board finds that appellant 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 left knee condition causally related to the accepted October 16, 2021 employment incident.[16]

[12] *R.C., supra* note 9; *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019).

[13] *B.P.*, Docket No. 21-0872 (issued December 8, 2021); *S.J.*, Docket No. 17-0783 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[14] Section 8101(2) of FECA provides that 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 2.805.3(a)(1) (January 2013); *B.P., id.*; *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 T.J.*, Docket No. 19-1339 (issued March 4, 2020) (nurse practitioners are not considered physicians under FECA).

[15] *Id.*

[16] The Board notes that the employing establishment issued a Form CA-16, dated November 4, 2021. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT December 2, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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