United States Department of Labor
Employees' Compensation Appeals Board

C.W., Appellant	)	
and	)	**Docket No. 21-1095**
	)	**Issued: May 20, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Harrisburg, PA, 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
JANICE B. ASKIN, Judge

JURISDICTION

On July 13, 2021 appellant filed a timely appeal from a January 19, 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]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 19, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition causally related to the accepted December 9, 2020 employment incident.

FACTUAL HISTORY

On December 11, 2020 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2020 he injured his neck when a vehicle struck the rear of his stationary postal delivery truck while in the performance of duty. He stopped work on December 9, 2020 and returned to work on December 11, 2020.

In a December 14, 2020 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 the first page of an unsigned December 9, 2020 after-visit summary, which indicated that appellant was seen in the emergency department following a motor vehicle accident. It indicated that, following an x-ray of the lumbar spine and a computerized tomography scan of the cervical spine, he was diagnosed with strains of the neck muscle and lumbar region.

In a return-to-work note dated December 9, 2020, Jeffrey Kelly, a physician assistant, indicated that appellant could not return to work until cleared by a "company [physician]."

In a December 10, 2020 duty status report (Form CA-17), an unidentifiable healthcare provider noted that appellant was a city carrier who experienced neck and back pain after his postal delivery truck was rear ended on December 9, 2020. Appellant was diagnosed with neck and low back pain and released to regular-duty work.

In a return-to-work note of even date, Michael Lukus, a physician assistant, released appellant to work without restrictions.

By decision dated January 19, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient 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 under 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

[3] *Supra* note 1.

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. First, 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.[7]

The evidence required to establish causal relationship 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 incident identified by the employee.[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 December 9, 2020 employment incident.

In support of his claim, appellant submitted the first page of an unsigned after visit summary report dated December 9, 2020 and a Form CA-17 dated December 10, 2020 from an unidentifiable healthcare provider. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 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).

[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).

as the author cannot be identified as a physician.[10] Accordingly, these reports are insufficient to establish appellant's claim.

The remaining evidence of record consists of return-to-work notes dated December 9 and 10, 2020 from Mr. Kelly and Mr. Lukus, both physician assistants. These notes, however, are of no probative value to establish causal relationship because physician assistants are not considered physicians as defined under FECA.[11]

As there is no rationalized medical evidence of record establishing a diagnosed medical condition causally related to the accepted December 9, 2020 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 December 9, 2020 employment incident.

[10] *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[11] 5 U.S.C. § 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. *See also 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). 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *George H. Clark*, 56 ECAB 162 (2004) (a physician assistant is not considered a physician under FECA).

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board