United States Department of Labor
Employees' Compensation Appeals Board

H.D., Appellant	)	
and	)	**Docket No. 22-0789**
	)	**Issued: November 16, 2022**
U.S. POSTAL SERVICE, PITTSBURGH POST OFFICE, Pittsburgh, PA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 26, 2022 appellant filed a timely appeal from a December 22, 2021 merit decision of the Office of Workers' Compensation Programs. 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 her burden of proof to establish a diagnosed medical condition in connection with the accepted October 18, 2021 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that appellant submitted additional evidence to OWCP following the December 22, 2021 decision. 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 November 9, 2021 appellant, then a 19-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2021 while in her delivery vehicle, she arose from her chair and struck the top of her head against a metal door frame, causing an intracerebral hematoma and major concussion. She stopped work on the date of injury. On the reverse side of the claim form, the employing establishment acknowledged that appellant was in the performance of duty when the incident occurred, but noted that there was insufficient medical records and no diagnosis from a physician.

On November 18, 2021 OWCP received an October 18, 2021 work slip signed by Andrea Liebersohn, a certified registered nurse practitioner; and October 25 and 29, 2021 work slips signed by Abbey B. Vanderlin, a physician assistant.

In a November 18, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence needed, and provided a questionnaire for her completion. OWCP afforded her 30 days to respond.[3]

In a December 15, 2021 letter, the employing establishment controverted the claim, asserting that appellant had not submitted medical evidence from a qualified physician.

On December 20, 2021 OWCP received November 12 and 22, 2021 work slips signed by Kirsten Bubb, a certified registered nurse practitioner.

By decision dated December 22, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted October 18, 2021 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 FECA[4] 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,[5] that the claim was timely filed within the applicable time limitation 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

[3] On December 13, 2021 OWCP received an undated report of work status which indicated appellant returned to full-time modified duty.

[4] *Supra* note 1; *D.M.*, Docket No. 18-1003 (issued July 16, 2020); *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *A.A.*, Docket No. 18-0031 (issued April 5, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

[5] *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).

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 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted October 18, 2021 employment incident.

In support of her claim, appellant submitted an October 18, 2021 work slip signed by Ms. Liebersohn, a certified registered nurse practitioner, October 25 and 29, 2021 work slips signed by Ms. Vanderlin, a physician assistant, and November 12, and 22, 2021 work slips signed by Ms. Bubb, a certified registered nurse practitioner. However, certain healthcare providers such as nurse practitioners and physician assistants are not considered physicians as defined under

[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] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

[10] *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *D.R.*, Docket No. 22-0471 (issued June 27, 2022); *M.E.*, Docket No. 22-0091 (issued May 6, 2022); *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).

FECA.[11] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[12]

As appellant has not submitted medical evidence sufficient to establish a diagnosed medical condition in connection with the accepted October 18, 2021 employment incident, the Board finds that she has not met her burden of proof to establish her claim.[13]

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 diagnosed medical condition in connection with the accepted October 18, 2021 employment incident.

[11] 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. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *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 S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *George H. Clark*,56 ECAB 162 (2004) (physician assistants are not considered physicians under FECA).

[12] *Id*.

[13] *K.R., supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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