United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 22-0636**
	)	**Issued: October 27, 2022**
U.S. POSTAL SERVICE, SAINT LOUIS POST OFFICE, St. Louis, MO, 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 16, 2022 appellant filed a timely appeal from a December 16, 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 diagnosed medical condition in connection with the accepted October 29, 2021 employment incident.

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[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the December 16, 2021 decision, appellant submitted additional evidence to OWCP. 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 4, 2021 appellant, then a 30-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on October 29, 2021 he hyperextended his left calf muscle when his vehicle was rear ended by a truck while in the performance of duty. He did not immediately stop work.

OWCP received discharge instructions from an emergency department dated October 29, 2021 from a provider whose signature was illegible, who released appellant to work with walking restricted to 50 feet once an hour.

In a November 10, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It explained the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded him 30 days to submit the necessary evidence.

An October 29, 2021 accident report noted that appellant was driving an employing establishment life long vehicle (LLV) and was rear ended by a pickup truck causing appellant's LLV to rear end the vehicle in front of him. The officer noted visible damage to the rear and front end of appellant's vehicle including the windshield. Appellant requested to receive treatment by medical personnel at the employing establishment.

On October 29, 2021 Dr. Curtis L. Horstman, an osteopath Board-certified in family medicine, treated appellant for a head and left lower extremity injury. Appellant reported sitting in a parked postal vehicle when he was rear ended by another vehicle. At the time of the accident, he was loosely wearing a seatbelt with his leg crossed. Appellant complained of discomfort of the lower left leg and a bump on the front of his forehead. He noted being ambulatory after the accident but had increasing pain and sought treatment in the emergency room. Dr. Horstman noted his clinical impression of a motor vehicle accident and discharged appellant home in stable condition.

A computerized tomography (CT) scan of the head dated October 29, 2021 revealed no acute intracranial abnormality. An x-ray of the left tibia fibula revealed no fractures. An x-ray of the cervical spine revealed no fractures.

On November 4, 2021 Elton Hoerning, a nurse practitioner, treated appellant for a left leg injury. Appellant reported being rear ended in his postal truck while he was at a stop. He stated that he was thrown forward somewhat violently and injured his left lower leg and possibly hit his head. Findings on physical examination revealed mild left lower leg pain to palpation in the posterior midline, mild soft tissue swelling of the left lower leg, increased pain with passive dorsiflexion of the ankle, and moderate antalgic gait. Mr. Hoerning diagnosed left lower leg pain, most likely calf strain, and returned appellant to work subject to restrictions. He treated appellant in follow up on November 10, 2021, who reported improvement in his symptoms and an ability to ambulate short distances. Findings on physical examination revealed minimal swelling of the left lower leg and mild discomfort to palpation along the posterior and lateral portions of the left lower leg in the calf. Mr. Hoerning diagnosed left lower leg pain, most likely calf strain. On November 23, 2021 appellant reported continuing improvement in his symptoms. Mr. Hoerning

diagnosed left lower leg pain status post motor vehicle accident and returned appellant to full-duty work.

In response to the development letter, appellant submitted a November 13, 2021 statement and noted that the automobile accident occurred on his regular route. He indicated that at the time of the accident he was on his regularly assigned route performing his regularly assigned duties.

By decision dated December 16, 2021, OWCP accepted that the October 29, 2021 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined 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 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. 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[7]

The medical evidence required to establish a 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

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[3] *Id*.

[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.J.,* Docket No. 19-0461 (issued August 11, 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).

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 in connection with the accepted October 29, 2021 employment incident.

In support of his claim, appellant submitted an October 29, 2021 report from Dr. Horstman who documented a head and left lower extremity injury that occurred when he was rear ended while stopped in his LLV. Dr. Horstman noted a clinical impression of motor vehicle accident. The Board has previously explained that a purported diagnosis of "injury" is not a firm diagnosis.[10] Likewise, Dr. Horstman's impression of "motor vehicle accident" may establish that a motor vehicle accident occurred on October 29, 2021, but does not provide a valid diagnosis. The mere acknowledgment of how an incident occurred, or that it caused an injury, does not constitute a valid medical diagnosis necessary to establish fact of injury.[11]

Appellant submitted reports from Mr. Hoerning, a nurse practitioner, dated November 4 through 23, 2021. However, certain healthcare providers such as physical therapists, nurse practitioners, nurses, and physician assistants are not considered physicians as defined under FECA.[12] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits. As such, this evidence is of no probative value and insufficient to meet appellant's burden of proof.

OWCP received discharge instructions dated October 29, 2021 bearing an illegible signature.[13] Reports that are unsigned or that bear illegible signatures cannot be considered

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[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] *See J.L.,* Docket No. 18-1804 (issued April 12, 2019).

[11] *See G.W.,* Docket No. 16-0517 (issued April 27, 2016).

[12] 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 B.D.,* Docket No. 22-0503 (issued September 27, 2022 (nurse practitioners are not considered physicians as defined under FECA and their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a nurse practitioner is not considered a physician as defined under FECA).

[13] 20 C.F.R. § 10.331(a) provides that use of medical report forms is not required; however, the report should bear the physician's signature or signature stamp.

probative medical evidence because they lack proper identification[14] as the author cannot be identified as a physician.[15]

Appellant also submitted a CT scan and x-rays. The Board has held that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not provide an opinion as to whether the employment incident caused any of the diagnosed conditions.[16] This evidence is, therefore, insufficient to establish appellant's claim.

The Board finds that there is no evidence of record that establishes a valid medical diagnosis from a qualified physician in connection with the accepted employment incident. Consequently, 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 10.607.15.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a diagnosed medical condition in connection with the accepted October 29, 2021 employment incident.

[14] *W.L.*, Docket No. 19-1581 (issued August 5, 2020); *Merton J. Sills,* 39 ECAB 572, 575 (1988).

[15] *D.T.*, Docket No. 20-0685 (issued October 8, 2020); *Merton J. Sills*, *id*.

[16] *C.B.,* Docket No. 20-0464 (issued July 21, 2020).

ORDER

IT IS HEREBY ORDERED THAT the December 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 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