United States Department of Labor
Employees' Compensation Appeals Board

K.G., Appellant	)	
and	)	**Docket No. 23-0711**
	)	**Issued: December 11, 2023**
U.S. POSTAL SERVICE, GREENTREE POST OFFICE, Pittsburgh, PA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On April 21, 2023 appellant filed a timely appeal from a March 30, 2023 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted January 23, 2023 employment incident.

FACTUAL HISTORY

On February 25, 2023 appellant, then a 38-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on January 23, 2023 he sustained left lower and middle back pain and sciatica after being hit by a bulk mail container

[1] 5 U.S.C. § 8101 *et seq*.

while in the performance of duty. On the reverse side of the claim form, his supervisor acknowledged that he was injured in the performance of duty. Appellant did not stop work.

In a February 27, 2023 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.

Thereafter, appellant submitted a January 27, 2023 report from Dr. Stephen E. Perryman, a Board-certified family practitioner, relating that, on January 23, 2023, appellant was hit on the left side by a metal container at work, which caused him to twist his low back. Dr. Perryman's examination demonstrated painful palpation of lumbar paraspinal muscles on the left, positive straight leg raise, and positive crossed straight leg raise. He diagnosed left hand pain, acute low back pain with sciatica, referred appellant to physical therapy, and recommended lifting restrictions at work.

Appellant also submitted a January 27, 2023 note from Sydney McWilliams, a physician assistant, releasing him for work with lifting restrictions, as well as an e-mail from Ms. McWilliams advising the same.

The employing establishment submitted a March 29, 2023 challenge statement, indicating that appellant had not established a medical diagnosis other than pain, and had not established causal relationship.

By decision dated March 30, 2023, OWCP accepted that the January 23, 2023 employment incident occurred, as alleged, but denied appellant's claim, finding that he had not submitted medical evidence containing a medical diagnosis by a physician in connection with his accepted 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[2] 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 period of FECA,[3] 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

[2] *Id*.

[3] *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).

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 must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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. The second component is whether the employment incident caused an injury.[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 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 diagnosed medical condition in connection with the accepted January 23, 2023 employment incident.

In support of his claim, appellant submitted a January 27, 2023 report, wherein Dr. Perryman related his history of injury and diagnosed left hand pain and acute low back pain with sciatica. However, the Board has held that pain is a description of a symptom, not a diagnosis of a medical condition.[9] It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis causally related to the accepted employment incident.[10] This report is, therefore, insufficient to meet appellant's burden of proof.

[4] *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).

[5] *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).

[6] *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] *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).

[8] *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 K.S.*, Docket No. 19-1433 (issued April 26, 2021); *S.L.*, Docket No. 19-1536 (issued June 26, 2020); *D.Y.*, Docket No. 20-0112 (issued June 25, 2020).

[10] *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

Appellant also submitted January 27, 2023 records from a physician assistant. The Board has held that medical reports signed solely by a physician assistant, registered nurse, or medical assistant are of no probative value as such healthcare providers are not considered physicians as defined under FECA, and are therefore, not competent to provide medical opinions.[11] Consequently, their medical findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.

As the medical evidence of record is insufficient to establish a diagnosed medical condition in connection with the accepted January 23, 2023 employment incident, the Board finds that appellant has not met his burden of proof to establish his claim.

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 in connection with the accepted January 23, 2023 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) (May 2023); *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).

ORDER

IT IS HEREBY ORDERED THAT the March 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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