

**United States Department of Labor  
Employees' Compensation Appeals Board**

R.O., Appellant	)	
	)	
and	)	Docket No. 23-0834
	)	Issued: December 18, 2023
U.S. POSTAL SERVICE, KILMER POST	)	
OFFICE, Edison, NJ, 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  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On May 24, 2023 appellant filed a timely appeal from a May 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a cervical condition causally related to the accepted November 30, 2022 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the May 23, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.

## **FACTUAL HISTORY**

On December 28, 2022 appellant, then a 32-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 30, 2022 she sustained a cervical disc herniation between C7 and T1 when she delivered multiple packages and felt a pull in her back while in the performance of duty, she indicated that the onset of pain came a few days later. She stopped work on December 14, 2022.

In a neurological consultation report dated December 16, 2022, Dr. Kangmin D. Lee, a Board-certified neurological surgeon, indicated that appellant was evaluated for complaints of chest pain and numbness and weakness in her bilateral lower extremities. He indicated that a magnetic resonance imaging (MRI) scan demonstrated C7-T1 disc herniation with severe cord compromise. On physical examination, Dr. Lee observed decreased sensation in the bilateral lower extremities and positive cervical paraspinal tenderness. He recommended surgical decompression of appellant's cervical spine.

In work status notes dated December 27 and 29, 2022, Dr. Lee opined that appellant was unable to work.

In a January 12, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP received a work status note dated December 13, 2022 by James W. Burns, an advanced practice nurse, who indicated that appellant was treated in the emergency room and may return to work on December 16, 2022.

Appellant submitted hospital records dated December 16 through 18, 2022, which indicated that she was admitted to the hospital and underwent an unauthorized spine surgery.

By decision dated February 16, 2023, OWCP accepted that the November 30, 2022 incident occurred as alleged, but denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted November 30, 2022 employment incident. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted an operative report dated December 16, 2022, which indicated that she underwent cervico-thoracic discectomy, decompression, and fusion surgery. The preoperative diagnosis noted large cervical thoracic disc herniation and spinal cord injury.

OWCP received a progress note dated December 29, 2022 by Nicole Ayala, a family nurse practitioner, who indicated that appellant was evaluated for status-post cervical surgery performed on December 16, 2022. Ms. Ayala reported neurological examination of intact sensation of the bilateral lower extremities. She diagnosed status-post cervical spinal fusion and recommended that appellant not work.

Appellant submitted a January 26, 2023 work status note by Dr. Lee who advised that she be excused from work as she recently underwent a surgical procedure on December 16, 2022.

In progress notes dated January 26 and March 9, 2023, Dr. Lee indicated that appellant reported improvement in her postoperative symptoms. On physical examination, he observed intact sensation to light touch in the upper and lower extremities and +4/5 motor examination in the lower extremities. Dr. Lee assessed status-post cervical spinal fusion.

In a report dated March 10, 2023, Dr. Lee indicated that on November 30, 2022 appellant was lifting heavy boxes when she began to experience severe and aching neck pain. He recounted that on December 16, 2022 she presented to the emergency room for worsening neck pain, numbness in her entire body, and particular weakness in the lower extremities to the point that she could no longer ambulate. Dr. Lee reported that imaging revealed a large acute C7-T1 disc herniation with severe cord compromise and evidence of spinal cord injury. He indicated that appellant was taken to the operating room for emergency cervical thoracic decompression discectomy and fusion surgery. Dr. Lee opined that “to the best [of his] medical judgment the injury that occurred at work on November 30, 2022 is directly and causally related to [appellant’s] disc herniation and subsequent spinal cord injury.” He explained that it was well known that cervical injuries can initially present with mild symptoms that progress over time.

On May 19, 2023 appellant requested reconsideration.

By decision dated May 23, 2023, OWCP denied modification of its February 16, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced

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<sup>3</sup> *Id.*

<sup>4</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *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).

the employment incident at the time, place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

To establish causal relationship between a diagnosed condition, as well as any attendant disability claimed, and the accepted employment incident, the employee must submit rationalized medical opinion evidence.<sup>8</sup> 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 the specific employment incident identified by the employee.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a cervical condition causally related to the accepted November 30, 2022 employment incident.

Appellant submitted reports by Dr. Lee dated December 16, 2022 through March 10, 2023 wherein he indicated that a cervical MRI scan demonstrated a large C7-T1 disc herniation with severe cord compromise. Dr. Lee conducted spinal surgery on December 16, 2022. In a report dated March 10, 2023, he described the November 30, 2022 employment incident and the subsequent medical treatment that appellant had received. Dr. Lee opined that “to the best [of his] medical judgment the injury that occurred at work on November 30, 2022 is directly and causally related to her disc herniation and subsequent spinal cord injury.” He explained that it was well known for cervical injuries to initially present with mild symptoms that progress over time. Dr. Lee’s reports, however, are of limited probative value as he did not provide any medical explanation for how lifting boxes at work caused or contributed to appellant’s cervical injury. The Board has held that medical opinion evidence must offer a rationalized explanation of how the specific employment incident or work factors, physiologically caused injury.<sup>10</sup> Consequently, Dr. Lee’s reports are insufficient to establish appellant’s claim.

The remaining records consist of a December 13, 2022 work status note by Mr. Burns, an advanced practice nurse, and a December 29, 2022 report by Ms. Ayala, a family nurse practitioner. However, certain healthcare providers such as nurses and nurse practitioners are not

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<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *C.F.*, Docket No. 18-0791 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *F.C.*, Docket No. 23-0132 (issued May 25, 2023); *G.R.*, Docket No. 21-1196 (issued March 16, 2022); *L.R.*, Docket No. 16-0736 (issued September 2, 2016); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

considered physicians as defined under FECA.<sup>11</sup> Therefore, these reports are insufficient to establish appellant's claim.

As the medical evidence of record is insufficient to establish a cervical condition causally related to the accepted November 30, 2022 employment incident, the Board finds that appellant has not met her 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 her burden of proof to establish a cervical condition causally related to the accepted November 30, 2022 employment incident.

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<sup>11</sup> 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).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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