

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

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C.C., Appellant)	
)	
and)	Docket No. 23-1006
)	Issued: December 28, 2023
U.S. POSTAL SERVICE, BOGGS ROAD POST)	
OFFICE, Duluth, GA, Employer)	
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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 July 14, 2023 appellant filed a timely appeal from a May 22, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met her burden of proof to establish a diagnosed medical condition in connection with the accepted July 26, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 22, 2023 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. *Id.*

FACTUAL HISTORY

On December 20, 2022 appellant, then a 59-year-old custodial laborer, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2022 she sustained painful swelling to the left hand when it got snagged on an improperly installed door handle while in the performance of duty. She stopped work on July 26 and returned to work on July 29, 2022.

In a development letter dated January 6, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated March 1, 2023, OWCP accepted that the July 26, 2022 incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. Thus, appellant had not met the requirements to establish an injury as defined by FECA.

On March 24, 2023 appellant requested reconsideration. With her request, she included a work status summary dated March 15, 2023, prepared by Linda Adhiambo, a nurse practitioner. Appellant's condition was assessed as left-hand pain. She also submitted a report dated March 15, 2023 prepared by Robert Massey, a nurse practitioner. This report was co-signed, but the signature was illegible and no indication of the individual's name or status as a physician was available within the report. The diagnosed condition was left-hand pain, a positive left Phalen's sign was noted.

By decision dated April 5, 2023, OWCP denied modification of its March 1, 2023 decision.

On May 12, 2023 appellant again requested reconsideration. With her request, she submitted a February 16, 2023 report prepared by Ms. Adhiambo and cosigned by Taylor M. Shuler, a certified occupational therapist. Ms. Shuler examined appellant for complaints of pain in the left hand. On physical examination of the left hand she observed tenderness to mild palpation, with appellant jumping when barely touched, and noting that when appellant arrived at the examination, she sat on her left hand. Ms. Shuler diagnosed left hand pain.

By decision dated May 22, 2023, OWCP denied modification of its April 5, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable

³ *Id.*

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

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred at the time and place, and in the manner alleged.⁷ The second component is whether the employment incident caused an injury and can be established only by medical evidence.⁸

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.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 July 26, 2022 employment incident.

In support of her claim, appellant submitted a March 15, 2023 report prepared by Mr. Massey, a nurse practitioner. This report was co-signed, but the signature was illegible and no indication of the individual's name or status as a physician was available within the report. The diagnosed condition was pain in the left hand. The Board has held that medical evidence containing an illegible signature, or which is unsigned has no probative value, as it is not

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *K.L.*, Docket No. 18-1029 (issued January 9, 2019). See *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁹ *M.S.*, Docket No. 19-1096 (issued November 12, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *R.S.*, Docket No. 19-1484 (issued January 13, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

established that the author is a physician.¹¹ Furthermore, the Board has held that medical reports signed solely by a nurse practitioner are of no probative value, as such health care providers are not considered physicians as defined under FECA, and therefore are not competent to provide a medical opinion.¹² As such, the March 15, 2023 report will not suffice to the purposes of establishing entitlement to FECA benefits. Similarly, the March 15, 2023 work status summary fails to establish appellant's claim, as it was signed solely by a nurse practitioner.

Appellant also submitted a February 16, 2023 report prepared by Ms. Adhiambo, a nurse practitioner. and cosigned by Ms. Shuler, a certified occupational therapist. Ms. Shuler diagnosed left hand pain. The Board has held that physical/occupational therapists are not considered physicians as defined under FECA and, therefore, are not competent to provide a medical opinion under FECA.¹³ It is appellant's burden of proof to obtain and submit medical documentation containing a firm diagnosis in connection with the accepted employment incident.¹⁴ As such, this evidence is insufficient to establish the claim.

OWCP also received another report from Ms. Adhiambo dated March 15, 2023. As previously noted, medical reports signed solely by a nurse practitioner are of no probative value, as such health care providers are not considered physicians as defined under FECA, and therefore are not competent to provide a medical opinion.¹⁵

The Board finds that appellant has not submitted probative medical evidence of a diagnosed medical condition in connection with the accepted July 26, 2022 employment incident.¹⁶ Appellant, therefore, 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.

¹¹ See *T.C.*, Docket No. 21-1123 (issued April 5, 2022); *Z.G.*, Docket No. 19-0967 (issued October 21, 2019); see *R.M.*, 59 ECAB 690 (2008); *Merton J. Sills*, 39 ECAB 572, 575 (1988); *Bradford L. Sullivan*, 33 ECAB 1568 (1982).

¹² Section 8101(2) of FECA provides that 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. § 8101(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, nurse practitioners and physical therapists are not competent to render a medical opinion under FECA). See also *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

¹³ *Id.*; see also *S.P.*, Docket No. 23-0622 (issued September 13, 2023) (occupational therapists are not considered physicians as defined under FECA).

¹⁴ *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

¹⁵ *Supra* note 12.

¹⁶ See *T.J.*, Docket No. 18-1500 (issued May 1, 2019); see *D.S.*, Docket No. 18-0061 (issued May 29, 2018).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted July 26, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 28, 2023
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