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

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| **J.R., Appellant** | ) | |
| **and** | ) | **Docket No. 21-0223** |
| | ) | **Issued: January 30, 2023** |
| **U.S. POSTAL SERVICE, CHARLES A. HAYES POST OFFICE, Chicago, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### *JURISDICTION*

On December 1, 2020 appellant filed a timely appeal from an October 5, 2020 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 13, 2018 employment incident.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that appellant submitted additional evidence on appeal. 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 October 13, 2018 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left lower leg when he lost his balance and fell as he was about to descend stairs while in the performance of duty. He stopped work on that same date.

In an accompanying statement, appellant alleged that on October 13, 2018 at 10:45 a.m. he fell down the stairs when a support column gave way while he was delivering mail. He asserted that he fell backward down the stairs, which bruised his back, scraped his leg, and tore his uniform pants.

In an October 18, 2018 development letter, OWCP informed appellant of the deficiencies in his claim. It advised 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 respond.

OWCP received additional evidence. In an October 15, 2018 letter, Dr. Max Pitlosh, Board-certified in family practice, excused appellant from work for the period October 15 through November 1, 2018 due to a work-related injury. He indicated that appellant required an x-ray to rule out fracture.

In an October 29, 2018 letter, Dr. Pitlosh released appellant to work effective November 11, 2018.

In an October 31, 2018 attending physician's report (Form CA-20), Dr. Pitlosh noted that appellant fell off a porch due to a broken banister and injured his left shoulder on October 13, 2018. He indicated that an x-ray revealed no fracture. Dr. Pitlosh diagnosed a left shoulder injury, neck pain, and abrasion. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the described employment activity.

Appellant also submitted physical therapy reports dated October 30 to November 9, 2018.

In a November 12, 2018 letter, Dr. Pitlosh noted that appellant underwent physical therapy and was significantly improved. On November 17, 2018 he held appellant off work and indicated that appellant required additional physical therapy.

Treatment notes received on December 18, 2018 indicated that appellant underwent occupational and physical therapy.

By decision dated October 5, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish a medical diagnosis in connection with the accepted October 13, 2018 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[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. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident 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 by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[9]

## ***ANALYSIS***

The Board finds that appellant has met his burden of proof to establish an abrasion causally related to the accepted October 13, 2018 employment incident.

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[3] *Supra* note 1.

[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.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).

[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).

[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).

OWCP found that the October 13, 2018 employment incident, in which appellant fell down the stairs while delivering mail, had occurred as alleged. Dr. Pitlosh, in his October 31, 2018 Form CA-20, noted that he observed an abrasion resulting from a fall at work. As the evidence of record establishes that appellant's fall resulted in a visible injury, the Board finds that appellant has met his burden of proof to establish an abrasion causally related to the accepted employment incident.[10]

As appellant has established an abrasion as an accepted employment-related condition, the Board will reverse in part the August 5, 2020 decision and the case shall be remanded for payment of medical costs and wage-loss compensation for disability, if any.

The Board further finds, however, that appellant has not met his burden of proof to establish additional conditions causally related to the accepted October 13, 2018 employment injury.

Dr. Pitlosh, in his October 31, 2018 Form CA-20, related a history that appellant had fallen off of a porch due to a broken banister while at work on October 13, 2018 and injured his left shoulder and sustained an abrasion. However, he did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[11] Therefore, Dr. Pitlosh's October 31, 2018 report is insufficient to establish additional conditions causally related to the accepted employment injury.

In his notes dated October 15 to November 17, 2018, Dr. Pitosh held appellant off work and noted that his condition improved with physical therapy. However, he did not provide an opinion on causal relationship. As noted above, medical evidence that does not offer an opinion on causal relationship is of no probative value.[12] Likewise, medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] As such, this evidence is also insufficient to establish additional conditions causally related to the accepted employment injury.

The remaining medical evidence consists of occupational and physical therapy treatment notes. The Board has held that medical reports signed solely by an occupational therapist or a physical therapist are of no probative value, as such healthcare providers are not considered

[10] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.6a (June 2011); *see also*, *Causal Relationship*, Chapter 2.805.3c (January 2013). *See also J.S.*, Docket No. 21-0376 (issued September 16, 2022); *A.J.*, Docket No. 20-0484 (issued September 2, 2020); *S.K.*, Docket No. 18-1411 (issued July 22, 2020).

[11] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[12] *Id*.

[13] *M.G.*, Docket No. 19-1863 (issued December 15, 2020); *R.D.*, Docket No. 19-1076 (issued July 2, 2020).

physicians as defined under FECA, and therefore are not competent to provide a medical opinion.[14] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to compensation benefits.[15]

As appellant has not submitted rationalized medical evidence establishing additional medical conditions causally related to the accepted October 13, 2018 employment injury, the Board finds that he has not met his burden of proof to establish his claim.[16]

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 and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that appellant has met his burden of proof to establish an abrasion causally related to the accepted October 13, 2018 employment incident. The Board further finds that appellant has not met his burden of proof to establish other medical conditions causally related to the accepted October 13, 2018 employment injury.

[14] 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 also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see 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 V.R.*, Docket No. 19-0758 (issued March 16, 2021) (a physical therapist is not considered a physician under FECA); *J.R.*, Docket No. 19-0812 (issued September 29, 2020) (an occupational therapist is not considered a physician under FECA).

[15] *See C.S.*, Docket No. 20-1354 (issued January 29, 2021); *B.B.*, Docket No. 18-0732 (issued March 11, 2020).

[16] *C.W.*, Docket No. 20-1027 (issued November 18, 2020); *J.T.*, Docket No. 18-1755 (issued April 4, 2019).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the October 5, 2020 decision of the Office of Workers' Compensation Programs is reversed in part and affirmed in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 30, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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