

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

L.E., Appellant)	
)	
and)	Docket No. 22-1061
)	Issued: January 23, 2023
U.S. POSTAL SERVICE, POST OFFICE, Nashville, TN, 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 July 1, 2022 appellant filed a timely appeal from a May 13, 2022 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 to consider the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 16, 2021 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 13, 2022 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 August 18, 2021 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on August 16, 2021 she sustained lower back pain when loading cat litter while in the performance of duty. She did not stop work.

In support of her claim, appellant submitted an August 16, 2021 duty status report (Form CA-17) and chart note by Brooke Guillo, a certified physician assistant, a September 3, 2021 physical therapy referral by Natasha Goins, a nurse practitioner, and an unsigned September 17, 2021 report from an urgent care clinic.

Appellant also submitted a series of physical therapy treatment notes dated from October 4 through November 16, 2021.

In a development letter dated December 10, 2022, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, OWCP received additional physical therapy treatment notes dated December 1 and 6, 2021.

By decision dated January 12, 2022, OWCP accepted that appellant loaded cat litter on August 16, 2021, as alleged. However, it denied her claim, finding that the medical evidence of record was insufficient to establish a medical diagnosis in connection with the accepted August 16, 2021 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant submitted additional physical therapy treatment notes dated from October 13, 2021 through January 27, 2022.

On March 8, 2022 appellant requested reconsideration. She submitted additional physical therapy treatment notes dated February 2 and 17, 2022.

By decision dated May 13, 2022, OWCP denied modification of its January 12, 2022 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 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

³ 20 C.F.R. § 10.607(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (September 2020).

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 if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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.¹⁰ Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition in connection with the accepted August 16, 2021 employment incident.

In support of her claim, appellant submitted an August 16, 2021 duty status report (Form CA-17) and an August 16, 2021 report by Ms. Guillo, a certified physician assistant, a September 3, 2021 physical therapy referral by Ms. Goins, a nurse practitioner, and a series of physical therapy treatment notes. The Board has held that medical reports signed solely by a nurse practitioner, physician assistant, or physical therapist, however, are of no probative value, as such healthcare providers are not considered physicians as defined under FECA and, therefore, are not

⁵ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁶ *See* 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499, 501-02 (1990).

⁷ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). *See also* 20 C.F.R. § 10.607(b); *supra* note 4 at Chapter 2.1602.5 (September 2020).

⁸ *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert G. Burns*, 57 ECAB 657 (2006).

⁹ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 4 at Chapter 2.1602.5(a) (September 2020).

¹⁰ *S.S.*, Docket No. 18-1488 (issued March 11, 2019).

¹¹ *T.M.*, Docket No. 22-0220 (issued July 29, 2022); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

competent to provide a medical opinion.¹² Therefore, this evidence is insufficient to establish appellant's claim.

Appellant also provided an unsigned September 17, 2021 report from an urgent care provider. The Board has held that reports that are unsigned or bear an illegible signature lack proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.¹³ Accordingly, this report is also insufficient to establish appellant's claim.

As the medical evidence of record does not contain a medical report relating a diagnosed medical condition to the accepted August 16, 2021 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 diagnosed medical condition in connection with the accepted August 16, 2021 employment incident.

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 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); *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

¹³ *A.H.*, Docket No. 22-0001 (issued July 29, 2022); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 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